

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1303

S.P. 468

In Senate, April 9, 2015

**An Act To Stabilize and Streamline the Department of
Environmental Protection's Ground Water Oil Clean-up Fund and
Maine Coastal and Inland Surface Oil Clean-up Fund**

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Representative WELSH of Rockport and
Representatives: CAMPBELL of Orrington, DUCHESNE of Hudson, HANLEY of Pittston,
HARLOW of Portland, MARTIN of Eagle Lake.

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§11-A**, as enacted by PL 1993, c. 363, §1 and
3 affected by §21, is amended to read:

4 **11-A.**

5 Environment/	<u>Clean-up and</u>	Expenses Only for	38 MRSA §568-B
6 Natural Resources	<u>Response</u> Fund	Certain Members	
7	Insurance Review		
8	Board		

9 **Sec. 2. 5 MRSA §12004-I, sub-§24-B**, as enacted by PL 1991, c. 698, §1, is
10 repealed.

11 **Sec. 3. 10 MRSA §1024, sub-§1**, as amended by PL 2003, c. 537, §29 and
12 affected by §53, is further amended to read:

13 **1. Request for funds.** If at any time the money in the Mortgage Insurance Fund and
14 the money in the Loan Insurance Reserve Fund, exclusive of the money pledged or
15 assigned as security for specific obligations of the authority, is insufficient to meet
16 expenses and obligations of the authority, as these expenses and obligations are projected
17 by the authority to become due and payable, the authority shall in writing request the
18 Governor to provide the necessary money. The Governor shall transfer sufficient money
19 to the Mortgage Insurance Fund or Loan Insurance Reserve Fund, as directed by the
20 authority, from the State Contingent Account or the proceeds of bonds of the State issued
21 pursuant to subsection 2. If at any time the money in the Underground Oil Storage
22 Replacement Fund, exclusive of any amounts reserved by law for direct loans pursuant to
23 section 1023-D, subsection 3, is insufficient to meet the expenses and obligations of the
24 authority incurred pursuant to section 1026-A, subsection 1, paragraph A, subparagraph
25 (1), division (b), as these expenses and obligations are projected by the authority to
26 become due and payable, the authority shall in writing request the Governor to provide
27 the necessary money. Within 30 days of receipt of the request, the Governor shall
28 transfer sufficient money to the Underground Oil Storage Replacement Fund from the
29 Maine Ground ~~Water~~ Oil and Surface Waters Clean-up and Response Fund or the
30 proceeds of bonds of the State issued pursuant to subsection 2.

31 **Sec. 4. 32 MRSA §10012, sub-§2**, as amended by PL 2007, c. 497, §1, is further
32 amended to read:

33 **2. Disposal of fees and civil penalties.** All fees received by the board under
34 subsection 1 and civil penalties imposed under sections 10015 or 10016 must be paid to
35 the Treasurer of State to be deposited into the Maine Ground ~~Water~~ Oil and Surface
36 Waters Clean-up and Response Fund and used for the purpose of carrying out all
37 applicable provisions of this chapter. Any balance of fees and civil penalties does not
38 lapse but must be carried forward as a continuing account to be expended for the same
39 purposes in the following fiscal years.

1 **Sec. 5. 32 MRSA §10015, first ¶**, as amended by PL 2005, c. 330, §2, is further
2 amended to read:

3 The jurisdiction to suspend or revoke certificates conferred by this section is
4 concurrent with that of the Superior Court. Civil penalties accrue to the Maine Ground
5 Water-Oil and Surface Waters Clean-up and Response Fund. Any nonconsensual action
6 under subsection 2-A taken under authority of this section may be imposed only after a
7 hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is
8 subject to judicial review exclusively in the Superior Court in accordance with Title 5,
9 chapter 375, subchapter 7, notwithstanding any other provision of law.

10 **Sec. 6. 32 MRSA §10016, sub-§5**, as enacted by PL 2007, c. 497, §2, is further
11 amended to read:

12 **5. Injunctions.** The Attorney General may bring an action in District Court or
13 Superior Court to enjoin a person from violating subsection 4 and to restore to a person
14 who has suffered any ascertainable loss by reason of that violation any money or personal
15 or real property that may have been acquired by means of that violation and to compel the
16 return of compensation received for engaging in that unlawful conduct.

17 A person who violates the terms of an injunction issued under this subsection shall pay to
18 the State a fine of not more than \$10,000 for each violation. In an action under this
19 subsection, when a permanent injunction has been issued, the court may order the person
20 against whom the permanent injunction is issued to pay to the Maine Ground Water-Oil
21 and Surface Waters Clean-up and Response Fund under Title 38, chapter 3, subchapter
22 ~~2-B~~ 2-A the costs of the investigation of that person by the Attorney General and the
23 costs of suit, including attorney's fees. In an action by the Attorney General brought
24 against a person for violating the terms of an injunction issued under this subsection, the
25 court may make the necessary orders or judgments to restore to a person who has suffered
26 any ascertainable loss any money or personal or real property or to compel the return of
27 compensation received by reason of such conduct found to be in violation of an
28 injunction.

29 **Sec. 7. 38 MRSA §341-G, sub-§1**, as amended by PL 1991, c. 817, §8, is further
30 amended to read:

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

37 **Sec. 8. 38 MRSA §342-B, sub-§5**, as enacted by PL 1993, c. 355, §4, is amended
38 to read:

39 **5. Relationship to ground water fund claims.** The exemption provided in
40 subsection 2, paragraph B from liability under section 570 does not exempt lenders who
41 apply to the Maine Ground Water-Oil and Surface Waters Clean-up and Response Fund

1 for coverage pursuant to section 568-A from the obligation to pay the full amount of
2 deductible determined by the commissioner.

3 **Sec. 9. 38 MRSA §542, sub-§4**, as enacted by PL 1969, c. 572, §1, is amended to
4 read:

5 **4. Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emitting,
6 escaping, emptying or dumping.

7 **Sec. 10. 38 MRSA §542, sub-§5**, as amended by PL 1985, c. 496, Pt. A, §6, is
8 further amended to read:

9 **5. Fund.** "Fund" means the Maine ~~Coastal~~ Ground and ~~Inland~~ Surface Oil Waters
10 Clean-up and Response Fund.

11 **Sec. 11. 38 MRSA §542, sub-§6**, as amended by PL 2011, c. 206, §12, is further
12 amended to read:

13 **6. Oil.** "Oil" means oil, oil additives, petroleum products and their by-products of
14 any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil
15 refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons
16 regardless of specific gravity. "Oil" does not include liquid natural gas.

17 **Sec. 12. 38 MRSA §542, sub-§8**, as enacted by PL 1969, c. 572, §1, is amended
18 to read:

19 **8. Owner or operator.** "~~Operate~~ Owner or operator" ~~shall mean~~ means any person
20 owning or operating an oil terminal facility whether by lease, contract or any other form
21 of agreement or a person in control of, or having responsibility for, the daily operation of
22 an oil storage facility.

23 **Sec. 13. 38 MRSA §542, sub-§9-C**, as enacted by PL 1997, c. 364, §25, is
24 amended to read:

25 **9-C. Responsible party.** "Responsible party" means any person who could be held
26 liable under section 552 or as defined in section 562-A, subsection 17.

27 **Sec. 14. 38 MRSA §548, 2nd ¶**, as amended by PL 1991, c. 817, §10, is further
28 amended to read:

29 Any unexplained discharge of oil within state jurisdiction or discharge of oil
30 occurring in waters beyond state jurisdiction that for any reason penetrates within state
31 jurisdiction must be removed by or under the direction of the commissioner. Any
32 expenses involved in the removal or cleanup of discharges, including the restoration of
33 water supplies contaminated by discharges from interstate pipelines and other discharges
34 prohibited by section 543, whether by the person reporting the discharge, the
35 commissioner or the commissioner's agents or contractors, must be paid in the first
36 instance from the Maine ~~Coastal~~ Ground and ~~Inland~~ Surface Oil Waters Clean-up and
37 Response Fund and any reimbursements due that fund must be collected in accordance
38 with section 551.

1 **Sec. 15. 38 MRSA §549**, as amended by PL 2013, c. 405, Pt. C, §23, is further
2 amended to read:

3 **§549. Personnel and equipment**

4 The commissioner shall establish and maintain at such ports within the State, and
5 other places as the commissioner determines, employees and equipment necessary to
6 carry out this subchapter. The commissioner, subject to the Civil Service Law, may
7 employ personnel necessary to carry out the purposes of this subchapter, and shall
8 prescribe the duties of those employees. The salaries of those employees and the cost of
9 that equipment must be paid from the Maine ~~Coastal~~ Ground and ~~Inland~~ Surface Oil
10 Waters Clean-up and Response Fund established by this subchapter. The commissioner
11 and the Director of the Division of Geology, Natural Areas and Coastal Resources shall
12 periodically consult with each other relative to procedures for the prevention of oil
13 discharges into the coastal waters of the State from offshore drilling production facilities.
14 Inspection and enforcement employees of the department in their line of duty under this
15 subchapter have the powers of a constable.

16 **Sec. 16. 38 MRSA §551**, as amended by PL 2013, c. 349, §1, is further amended
17 to read:

18 **§551. Maine Ground and Surface Waters Clean-up and Response Fund**

19 The Maine ~~Coastal~~ Ground and ~~Inland~~ Surface Oil Waters Clean-up and Response
20 Fund is established to be used by the department as a nonlapsing, revolving fund for
21 carrying out the purposes of this subchapter. The balance in the fund is limited to
22 ~~\$6,000,000, the sum of which includes all funds credited under this section~~ \$15,000,000.
23 The Department of Environmental Protection shall collect fees in accordance with
24 subsection 4. To this fund are credited all license and registration fees, fees for late
25 payment or failure to register, penalties, transfer fees, reimbursements, assessments and
26 other fees and charges related to this subchapter, ~~and to~~. To this fund are charged any
27 and all expenses of the department related to this subchapter, including administrative
28 expenses, costs of removal of discharges of pollutants, 3rd-party damages, costs of
29 cleanup of discharges of oil and oil by-products, including, but not limited to, restoration
30 of water supplies and ~~3rd-party damages covered by this subchapter~~ any obligations of
31 the State pursuant to Title 10, section 1024, subsection 1.

32 Money in the fund, not needed currently to meet the obligations of the department in
33 the exercise of its responsibilities under this subchapter must be deposited with the
34 Treasurer of State to the credit of the fund, and may be invested in such manner as is
35 provided for by statute. Interest received on that investment must be credited to the ~~Maine~~
36 ~~Coastal and Inland Surface Oil Clean-up Fund~~ fund.

37 ~~**1-A. Sensitive area data management and mapping.** The Legislature may allocate~~
38 ~~no more than \$350,000 per year of the amount then currently in the fund until fiscal year~~
39 ~~1994-95 to mapping, data management and computerization related to the protection of~~
40 ~~sensitive areas and similar activities required under section 546-B. This limitation does~~
41 ~~not include personnel costs. The allocations must be made in accordance with section~~

1 555. ~~After fiscal year 1993-94, the Legislature must review the need for these activities~~
2 ~~before allocating additional funds.~~

3 **1-B. Research and development.** The Legislature may allocate not more than
4 ~~\$250,000~~ \$100,000 per annum of the amount currently in the fund to be devoted to
5 research and development in the causes, effects and removal of pollution caused by oil;
6 ~~petroleum products and their by products on waters of the State. Researchers receiving~~
7 ~~funds under this subsection shall use vessels based in this State as platforms when~~
8 ~~practicable.~~ Such allocations must be made in accordance with section 555.

9 **2. Third-party damages.** Any person claiming to have suffered property damage or
10 actual economic damages, including, but not limited to, loss of income and medical
11 expenses arising from physical bodily injury, directly or indirectly as a result of a
12 discharge of oil prohibited by section 543 including all discharges of oil from interstate
13 pipelines, in this subsection called "the claimant," may apply within 12 months after the
14 occurrence of a discharge to coastal waters and for other ~~surface~~ discharges within 2
15 years after the occurrence or discovery of the injury or damage, whichever date is later, to
16 the commissioner stating the amount of damage alleged to have been suffered as a result
17 of that discharge. The commissioner shall prescribe appropriate forms and details for the
18 applications. The commissioner may contract with insurance professionals to process
19 claims. The commissioner may, upon petition and for good cause shown, waive the time
20 limitation for filing damage claims. All 3rd-party damage claims for which no
21 determination of award has been made must be processed in accordance with the
22 substantive and procedural provisions of this section.

23 A. When a responsible party is known, the commissioner shall send by certified mail
24 to the responsible party notice of claim and written notice of the right to join the
25 3rd-party damage claim process as an interested party. A responsible party shall
26 provide written notification to the department of the responsible party's intent to join
27 within 10 working days of receipt of this notice. If the responsible party joins as an
28 interested party and formally agrees in writing to the amount of the damage claim, the
29 determination of the amount of the claim and award is binding in any subsequent
30 action for reimbursement to the fund. If a claimant has not been compensated for
31 3rd-party damages by the responsible party or the expenses are above the responsible
32 party's deductible and the claimant, the responsible party and the commissioner agree
33 as to the amount of the damage claim, or if the responsible party does not join as an
34 interested party or when the responsible party is not known after the commissioner
35 has exercised reasonable efforts to ascertain the responsible party, and the claimant
36 and the commissioner agree as to the amount of the damage claim, the commissioner
37 shall certify the amount of the claim and the name of the claimant to the Treasurer of
38 State and the Treasurer of State shall pay the amount of the claim from the ~~Maine~~
39 ~~Coastal and Inland Surface Oil Clean-up Fund~~ fund.

40 B. If the claimant, the responsible party and the commissioner are not able to agree
41 as to the amount of the damage claim, or if the responsible party does not join as an
42 interested party or when the responsible party is not known after the commissioner
43 has exercised reasonable efforts to ascertain the responsible party, and the claimant
44 and the commissioner are not able to agree as to the amount of the damage claim, the
45 claim is subject to subsection 3-A.

- 1 C. Third-party damage claims must be stated in their entirety in one application.
2 Damages omitted from any claim at the time the award is made are waived unless the
3 damage or injury was not known at the time of the claim.
- 4 D. Damage claims arising under this subchapter that are a result of a prohibited
5 discharge to coastal waters are recoverable only in the manner provided under this
6 subchapter, it being the intent of the Legislature that the remedies provided in this
7 subchapter for discharges to coastal waters are exclusive.
- 8 E. Awards from the fund on damage claims may not include any amount the
9 claimant has recovered, on account of the same damage, by way of settlement with
10 the responsible party or the responsible party's representatives or judgment of a court
11 of competent jurisdiction against the responsible party to the extent these amounts are
12 duplicative.
- 13 F. A claimant shall take all reasonable measures to prevent and minimize damages
14 suffered by the claimant as a result of a discharge of oil. Reasonable measures
15 include title searches and site assessments for the acquisition of commercial or
16 industrial properties.
- 17 G. The remedies provided for 3rd-party damage claims compensated under this
18 subchapter are nonexclusive for damages that are not a result of prohibited discharges
19 to coastal waters. A court awarding damages to a claimant as a result of a discharge
20 of oil to surface waters prohibited by section 543 shall reduce damages awarded by
21 any amounts received from the fund to the extent these amounts are duplicative.
- 22 H. Payments from the fund for 3rd-party damage claims may not exceed \$200,000
23 per claimant except when the damages are a result of a discharge to coastal waters or
24 when the claimant is a publicly owned or operated public water system.
- 25 I. A 3rd-party damage claim for damages to real estate may not include the
26 devaluation of the real estate associated with the loss of a water supply if the
27 commissioner finds under section 548 or section 568, subsection 2 that a public or
28 private water supply is available and if that water supply best meets the criteria of
29 that section and the property owner did not agree to be served by that public or
30 private water supply. If a water supply well is installed after October 1, 1994 to serve
31 a location that immediately before the well installation was served by a viable
32 community public water system, and the well is or becomes contaminated with oil:
- 33 (1) A 3rd party may not recover damages under this subchapter for expenses
34 incurred in treating or replacing the well if the well is installed in an area
35 delineated as contaminated as provided in section 548, subsection 1; and
- 36 (2) A 3rd-party damage claim under this subchapter with regard to treatment or
37 replacement of the well is limited to reimbursement of the expense of installing
38 the well and its proper abandonment if the well is installed in any other area.
- 39 For purposes of this paragraph, "viable community public water system" has the same
40 meaning as in section 548.
- 41 J. A claimant is not eligible for compensation under this subsection for costs,
42 expenses or damages related to a discharge if the commissioner determines that the
43 claimant is a responsible party ~~as defined under section 542, subsection 9-C.~~

1 K. Prior to forwarding a claim to the hearing examiner under subsection 3-A, the
2 commissioner may require that the amount of the claim be finalized.

3 L. Third-party damage claims may not include expenditures for the preparation and
4 prosecution of the damage claim, such as legal fees or real estate appraisal fees.

5 M. The commissioner may dismiss a 3rd-party damage claim for untimely filing, for
6 failure by the claimant to provide the information necessary to process the claim
7 within 60 days after the claimant receives written notice that the claim is insufficient
8 for processing or for ineligibility as determined by the commissioner under paragraph

9 J. A dismissal may be appealed to Superior Court in accordance with Title 5, chapter
10 375, subchapter 7.

11 **2-B. Claimant contact.** When the commissioner becomes aware of a claimant
12 under subsection 2, the commissioner shall send a letter by certified mail to inform that
13 person of the 3rd-party damage claims process under subsection 2. The letter must
14 contain the name and telephone number of a contact person available to explain the
15 claims procedure.

16 **3-A. Determination of disputed 3rd-party damage claims.** The commissioner
17 shall establish a disputed claims processing capability within the department to hear and
18 determine claims filed under this subchapter that are not agreed upon by the claimant and
19 the commissioner and any responsible party who has joined as an interested party.

20 A. An independent hearing examiner appointed by the commissioner shall hear and
21 determine any disputed 3rd-party damage claims. The parties to the hearing are the
22 commissioner and the claimant.

23 B. To the extent practical, all claims arising from or related to a common discharge
24 must be heard and determined by the same hearing examiner.

25 C. Hearings before the hearing examiner are informal and the rules of evidence
26 applicable to judicial proceedings are not binding. The hearing examiner may
27 administer oaths and require by subpoena the attendance and testimony of witnesses
28 and the production of books, records and other evidence relative or pertinent to the
29 issues presented to the hearing examiner for determination.

30 D. Determinations made by the hearing examiner are final and those determinations
31 may be subject to review by a Justice of the Superior Court, but only as to matters
32 related to abuse of discretion by the hearing examiner. The party seeking review of a
33 hearing examiner's determination must file an appeal in the Superior Court within 30
34 days of the determination. Determinations made by the hearing examiner must be
35 accorded a presumption of regularity and validity in a subsequent reimbursement
36 action, but this presumption may be rebutted by responsible parties.

37 E. The commissioner shall certify the amount of the damage award, if any, after
38 determination by the hearing examiner and shall certify the name of the claimant to
39 the Treasurer of State.

40 **4. Funding.** The ~~Maine Coastal and Inland Surface Oil Clean-up Fund~~ fund is
41 funded pursuant to this subsection.

1 A. ~~License fees are 3¢ per barrel of unrefined crude oil and all other refined oil,~~
2 ~~including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel,~~
3 ~~transferred by the licensee during the licensing period and A fee is assessed on the~~
4 ~~first transfer of products listed in this subsection by oil terminal facility licensees and~~
5 ~~on a person required to register with the commissioner under section 545-B who first~~
6 ~~transports oil into the State. These fees must be paid monthly by the licensee on the~~
7 ~~basis of records certified to the commissioner. License fees must be paid to the~~
8 ~~department and upon receipt by it credited to the Maine Coastal and Inland Surface~~
9 ~~Oil Clean-up Fund fund.~~

10 A-1. A fee is assessed of:

11 (1) Three cents per barrel of unrefined crude oil and liquid asphalt;

12 (2) Seven cents per barrel of #6 fuel oil;

13 (3) Twenty-two cents per barrel of #2 fuel oil, kerosene, jet fuel, diesel fuel and
14 other refined products and their by-products not otherwise specified in this
15 subsection, excluding liquid asphalt; and

16 (4) Forty-one cents per barrel of gasoline.

17 This paragraph does not apply to waste oil transported into the State in any motor
18 vehicle that has a valid license issued by the department for the transportation of
19 waste oil pursuant to section 1319-O, subsection 1, paragraph C and is subject to fees
20 established under section 1319-I.

21 ~~D. Any A person required to register under section 545-B and who first transports oil~~
22 ~~in Maine shall pay 3¢ per barrel for all crude and refined oil, including #6 fuel oil, #2~~
23 ~~fuel oil, kerosene, gasoline, jet fuel, diesel fuel and liquid asphalt transported by the~~
24 ~~registrant during the period of registration. Fees must be paid monthly by the~~
25 ~~registrant on the basis of records certified to the commissioner. Fees must be paid to~~
26 ~~the department and upon receipt by it credited to the Maine Coastal and Inland~~
27 ~~Surface Oil Clean-up Fund. The registrant subject to this subsection shall make~~
28 ~~available to the commissioner and the commissioner's authorized representatives all~~
29 ~~documents relating to the oil the person transported by the registrant or transferred~~
30 ~~during the period of registration or the licensed period. This paragraph does not~~
31 ~~apply to waste oil transported into Maine in any motor vehicle that has a valid license~~
32 ~~issued by the department for the transportation of waste oil pursuant to section~~
33 ~~1319-O and is subject to fees established under section 1319-I.~~

34 E. When the commissioner projects that the fund balance will reach \$6,000,000
35 \$15,000,000, the commissioner shall provide a 15-day notice that the per barrel fees
36 assessed under this subsection will be suspended. The \$6,000,000 \$15,000,000 fund
37 limit may be exceeded to accept transfer fees assessed or received after the 15-day
38 notice has been issued. Following any suspension of fees assessed under this
39 subsection, the commissioner shall provide a 15-day advance notice to licensees
40 before fees are reimposed.

41 F. If the fund balance is reduced to \$6,000,000 or less, the Clean-up and Response
42 Fund Review Board under section 568-B may adopt rules increasing the fees imposed
43 under paragraph A-1 by up to 20¢ per barrel for gasoline and up to 10¢ per barrel for

1 other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid
2 a shortfall in the fund. The Clean-up and Response Fund Review Board may use the
3 emergency rule-making procedures under Title 5, section 8054 if necessary to ensure
4 that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted
5 pursuant to this paragraph terminates and the fees imposed under paragraph A-1
6 apply when the fund balance reaches \$10,000,000.

7 **4-A. Penalty for late payment of fees.** Fees assessed under subsection 4 are due to
8 the department on or before the last day of the month immediately following the month in
9 which the oil was transferred or first transported in this State. Licensees or registrants
10 who fail to pay the fee by that date shall pay an additional amount equal to 10% of the
11 amount assessed under subsection 4. The department may waive the penalty for good
12 cause shown by the licensee or registrant. Good cause may include, without limitation,
13 events that may not be reasonably anticipated or events that were not under the control of
14 the licensee or registrant.

15 **4-B. Reimbursement for fees imposed on transfers out of State.** Any person who
16 paid a fee under subsection 4, paragraph A on petroleum products that were exported
17 from this State must be reimbursed by the department upon presentation of
18 documentation of that payment and transfer within 12 months of each transfer.

19 **5. Disbursements from fund.** Money in the ~~Maine Coastal and Inland Surface Oil~~
20 ~~Clean-up Fund~~ shall fund may be disbursed for the following purposes and no others:

21 A. Administrative expenses, ~~personnel expenses~~ personal services and equipment
22 costs of the ~~commissioner~~ department related to the administration and enforcement
23 of this subchapter, except that total disbursements for personal services may not
24 exceed \$7,000,000 per fiscal year;

25 B. All costs, including without limitation personnel undertaking oil spill response
26 and clean-up activities and equipment expenses, involved in the removal of oil, the
27 abatement of pollution and the implementation of remedial measures including
28 restoration of water supplies, related to the discharge of oil, petroleum products and
29 their by-products covered by this subchapter, including the discharge of oil from an
30 oil storage facility not paid by a responsible party or an applicant for coverage by the
31 fund, and all discharges from interstate pipelines and other discharges prohibited by
32 section 543;

33 C. Sums allocated to research and development in accordance with this section;

34 D. Payment of ~~3rd party~~ 3rd-party claims awarded in accordance with this section
35 that are not paid by the responsible party or applicant for coverage by the fund and
36 payment of 3rd-party damage claims that are paid to owners or operators pursuant to
37 subsection 6;

38 E. Payment of costs of hearings, independent hearing examiners and independent
39 claims adjusters for 3rd-party damage claims;

40 F. Payment of costs of insurance by the State to extend or implement the benefits of
41 the fund;

1 H. Sums, up to \$50,000 each year, that have been allocated by the Legislature on a
2 contingency basis in accordance with section 555 for payment of costs for damage
3 assessment for specific spills and site-specific studies of the environmental impacts of
4 a particular discharge prohibited by section 543 that may have adverse economic
5 effects and occur subsequent to such an allocation, when those studies are determined
6 necessary by the commissioner; ~~and~~

7 I. Payment of costs for the collection of overdue reimbursements;

8 J. All costs associated with the Board of Underground Oil Storage Tank Installers,
9 not to exceed \$100,000;

10 K. Payments to or on behalf of applicants eligible for coverage by the fund under
11 section 568-A, subsection 1 for expenses above the deductible specified in section
12 568-A, subsection 2 incurred in commissioner-approved clean-up activities and
13 specified in an agreement under section 568-A, subsection 4;

14 L. All costs associated with the Clean-up and Response Fund Review Board, not to
15 exceed \$200,000;

16 M. Costs incurred by the Office of the State Fire Marshal to implement the duties
17 assigned to the State Fire Marshal in this chapter, not to exceed \$150,000;

18 N. Sums up to \$500,000 annually to retrofit, repair, replace or remove aboveground
19 oil storage tanks or facilities when the commissioner determines that action is
20 necessary to abate an imminent threat to a groundwater restoration project, a public
21 water supply or a sensitive geologic area, including coastal islands and peninsulas.
22 Money available under this paragraph may be disbursed by the department to pay
23 reasonable costs actually incurred by municipalities in assisting the department in
24 taking actions under this paragraph. Money available under this paragraph may also
25 be used by the department to fund educational efforts that encourage the retrofit,
26 repair, replacement or removal of aboveground oil storage tanks or facilities. Money
27 may not be disbursed from the fund for the purposes of this paragraph until the
28 department has presented a plan for such disbursements to the Clean-up and
29 Response Fund Review Board. Money may not be disbursed from the fund under this
30 paragraph unless the department has adopted a written policy in accordance with the
31 Maine Administrative Procedure Act establishing:

32 (1) Criteria for determining those instances when funds should be disbursed
33 under this paragraph, including criteria for determining what constitutes a
34 sensitive geologic area;

35 (2) Guidelines that ensure that money disbursed from the fund under this
36 paragraph will be used in the most cost-effective manner, considering the
37 likelihood of actual contamination of water supplies absent action taken pursuant
38 to this paragraph, the costs of remediation of such contamination and the
39 possibility that the owner of an aboveground oil storage tank or facility would
40 retrofit, repair, replace or remove the tank at the owner's own expense;

41 (3) Guidelines for payments to municipalities for reasonable administrative costs
42 actually incurred by municipalities in assisting the department in taking actions
43 under this paragraph;

1 (4) A means test for eligibility for disbursements from the fund;

2 (5) A deductible that is adjusted according to the financial means of the person
3 receiving a disbursement; and

4 (6) Limits for eligibility to residents of this State; and

5 O. Sums up to \$2,000,000 annually to distribute to community action agencies as
6 defined in Title 22, section 5321, subsection 2 for loans and grants to retrofit, repair,
7 replace or remove aboveground and underground oil storage tanks and associated
8 pipng at single-family residences. Money may not be disbursed from the fund for the
9 purposes of this paragraph until the department has presented a plan for such
10 disbursements to the Clean-up and Response Fund Review Board. A community
11 action agency shall administer the funds in accordance with program operating
12 standards, including the allocation formula established by the Maine State Housing
13 Authority for its weatherization program. Sums available under this paragraph may
14 be disbursed by the department to pay reasonable costs actually incurred by a
15 community action agency in providing services pursuant to this paragraph. Money
16 may not be disbursed from the fund under this paragraph unless the department has
17 adopted a written policy in accordance with the Maine Administrative Procedure Act
18 establishing guidelines for payments to community action agencies for reasonable
19 administrative costs actually incurred by community action agencies in providing
20 services pursuant to this paragraph.

21 **6. Reimbursements to Maine Ground and Surface Waters Clean-up and**
22 **Response Fund.** For the use of the fund, the commissioner shall seek recovery of all
23 disbursements from the fund for the following purposes, including overdrafts and interest
24 computed at 15% a year from the date of expenditure, unless the department finds the
25 amount involved too small, the likelihood of success too uncertain or that recovery of
26 costs is unlikely due to the inability of the responsible party to pay those costs, ~~provided~~
27 except that recoveries resulting from damage due to an oil pollution disaster declared by
28 the Governor pursuant to section 547 must be apportioned between the ~~Maine Coastal~~
29 ~~and Inland Surface Oil Clean-up Fund~~ fund and the General Fund so as to repay the full
30 costs to the General Fund of any bonds issued as a result of the disaster:

31 A. All disbursements made by the fund pursuant to subsection 5, paragraphs A, B, D,
32 E, H and I in connection with a prohibited discharge; ~~and~~

33 B. In the case of a licensee promptly reporting a discharge as required by this
34 subchapter, disbursements made by the fund pursuant to subsection 5, paragraphs B,
35 D and E in connection with any single prohibited discharge including 3rd-party
36 claims in excess of \$15,000, except to the extent that the costs are covered by
37 payments received under any federal program;

38 E. Disbursements made by the fund greater than \$750,000 per occurrence expended
39 from the fund pursuant to subsection 5, paragraph K for an applicant for coverage by
40 the fund found by the commissioner to be eligible under section 568-A, subsection 1,
41 excluding occurrences at underground oil storage facilities; and

42 F. Disbursements made by the fund greater than \$1,000,000 per occurrence at an
43 underground oil storage facility expended from the fund pursuant to subsection 5,

1 paragraph K for an applicant for coverage by the fund found by the commissioner to
2 be eligible under section 568-A, subsection 1.

3 Requests for reimbursement to the fund, if not paid within 30 days of demand, may be
4 turned over to the Attorney General for collection or may be submitted to a collection
5 agency or agent or an attorney retained by the department with the approval of the
6 Attorney General in conformance with Title 5, section 191, or the department may file
7 suit in District Court. The commissioner may file claims with appropriate federal
8 agencies to recover for the use of the fund all disbursements from the fund in connection
9 with a prohibited discharge.

10 Requests for reimbursement to the fund for disbursements pursuant to subsection 5,
11 paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed
12 twice the total amount of reimbursement requested. This penalty is in addition to the
13 reimbursement requested and any other fines or civil penalties authorized by this Title.

14 **6-A. Lien.** All costs incurred by the State in the removal, abatement and
15 remediation of a prohibited discharge of oil, all costs incurred by the State in the
16 abandonment of an underground oil storage facility or tank under section 566-A,
17 subsection 4 and interest are a lien against the real estate of the responsible party. The
18 lien does not apply to the real estate of a licensee if the discharge was caused or suffered
19 by a carrier destined for the licensee's facilities. For a responsible party determined
20 eligible for coverage under section 568-A, subsection 1, the lien is for the amount of any
21 unpaid deductible assigned under section 568-A, subsection 2 and any eligible clean-up
22 costs and 3rd-party damage claims above \$750,000, or above \$1,000,000 for underground
23 oil storage facilities.

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

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

37 **7. Waiver of reimbursement.** Upon petition of any licensee, the board may, after
38 hearing, waive the right to reimbursement to the fund if it finds that the occurrence was
39 the result of any of the following:

40 A. An act of war;

41 B. An act of government, either state, federal or municipal, except insofar as the act
42 was pursuant to section 548; or

1 C. An act of God, which means an unforeseeable act exclusively occasioned by the
2 violence of nature without the interference of any human agency.

3 Upon such finding by the board, immediate credit therefor must be entered for the party
4 involved. The findings of the board are conclusive as it is the legislative intent that waiver
5 provided in this subsection is a privilege conferred, not a right granted.

6 **8. Disbursements to state agencies.** A state agency that seeks reimbursement from
7 the ~~Maine Coastal and Inland Surface Oil Clean-up Fund~~ fund for costs incurred in
8 undertaking oil spill response activities shall keep time records demonstrating the amount
9 of spill response activities performed for which reimbursement is sought. A state agency
10 may establish a dedicated account for receipt of disbursements from the fund.
11 Disbursements from the fund to a state agency pursuant to subsection 5, paragraph B
12 must be deposited in that account, if it has been established, and may be used by the
13 agency to support its activities.

14 **Sec. 17. 38 MRSA §551-A**, as amended by PL 2007, c. 292, §§30 to 32, is
15 repealed.

16 **Sec. 18. 38 MRSA §562-A, sub-§4-A** is enacted to read:

17 **4-A. Clean-up and Response Fund Review Board.** "Clean-up and Response Fund
18 Review Board" or "review board" means the board created in section 568-B.

19 **Sec. 19. 38 MRSA §562-A, sub-§9**, as enacted by PL 1989, c. 865, §2, is
20 amended to read:

21 **9. Fund.** "Fund" means the Maine Ground Water-Oil and Surface Waters Clean-up
22 and Response Fund.

23 **Sec. 20. 38 MRSA §562-A, sub-§9-A**, as enacted by PL 1993, c. 363, §4 and
24 affected by §21, is repealed.

25 **Sec. 21. 38 MRSA §562-A, sub-§17, ¶E**, as amended by PL 2007, c. 655, §3, is
26 further amended to read:

27 E. With regard to sections 551, 568, 568-A, ~~569-A~~ and 570, persons described in
28 paragraphs A to D with regard to aboveground oil storage facilities.

29 **Sec. 22. 38 MRSA §566-A, sub-§4**, as amended by PL 2009, c. 121, §11, 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 seek recovery of
34 costs incurred to undertake the abandonment, whether from state or federal funds, in
35 accordance with the procedures set forth in section ~~569-A~~ 551, subsection ~~40~~ 6. Costs
36 incurred by the commissioner to undertake the abandonment are a lien against the real
37 estate of the owner as provided under section ~~569-A~~ 551, subsection ~~40-A~~ and section
38 ~~569-B~~, subsection 6-A.

1 **Sec. 23. 38 MRSA §568, sub-§1**, as amended by PL 2009, c. 121, §12, is further
2 amended to read:

3 **1. Removal.** Any person discharging or suffering a discharge of oil from an
4 underground oil storage facility or an aboveground oil storage facility in the manner
5 prohibited by section 543 and any other responsible party shall immediately undertake to
6 remove that discharge to the commissioner's satisfaction. Notwithstanding this
7 requirement, the commissioner may order the removal of that discharge pursuant to
8 subsection 3 or may undertake the removal of that discharge and retain agents and
9 contractors for that purpose, who shall operate under the direction of the commissioner.
10 Any unexplained discharge of oil within state jurisdiction must be removed by or under
11 the direction of the commissioner. Any expenses involved in the removal of discharges,
12 whether by the person causing the discharge, the person reporting the discharge, the
13 commissioner or the commissioner's agents or contractors, may be paid in the first
14 instance from the ~~Ground Water Oil Clean-up Fund~~ fund, including any expenses
15 incurred by the State under subsection 3, and any reimbursements due that fund must be
16 collected in accordance with section ~~569-A or 569-B~~ 551, subsection 6.

17 **Sec. 24. 38 MRSA §568, sub-§6**, as enacted by PL 1991, c. 763, §7, is amended
18 to read:

19 **6. Reimbursement.** If the commissioner requires an underground oil storage facility
20 owner or operator to remove or close an underground oil storage facility upon evidence of
21 a leak and if after investigation that facility is found not to be the source of a leak, the
22 commissioner shall immediately reimburse that facility owner or operator from the fund
23 for the documented costs of that removal. The facility owner or operator may be
24 reimbursed for damages resulting from the removal, such as loss of income, through the
25 3rd-party damage claim process in section ~~569~~ 551.

26 **Sec. 25. 38 MRSA §568-A, sub-§1, ¶A**, as amended by PL 1995, c. 361, §4, is
27 further amended to read:

28 A. The applicant must submit within 180 days of reporting the discharge a written
29 request to the commissioner to be covered by the fund. The request must include:

- 30 (1) A description of the discharge and the locations threatened or affected by the
31 discharge, to the extent known;
- 32 (2) An agreement that the applicant shall pay the deductible amount specified in
33 subsection 2;
- 34 (3) For underground storage facilities, documentation regarding the applicant's
35 compliance with the requirements of subsection 2, paragraph B; and
- 36 (4) For aboveground facilities, documentation required by the Clean-up and
37 Response Fund ~~Insurance~~ Review Board.

38 The commissioner with respect to a claim involving an underground oil storage
39 facility, or the State Fire Marshal with respect to a claim involving an aboveground
40 oil storage facility, may waive the 180-day filing requirement for applicants for
41 coverage of clean-up costs for discharges discovered after April 1, 1990 when the

1 applicant has cooperated in a timely manner with the department in cleaning up the
2 discharge.

3 **Sec. 26. 38 MRSA §568-A, sub-§1, ¶H**, as enacted by PL 1995, c. 361, §4, is
4 amended to read:

5 H. The Clean-up and Response Fund ~~Insurance~~ Review Board shall develop, in
6 consultation with the State Fire Marshal, the documentation requirements for claims
7 submitted under this section by owners of aboveground oil storage facilities.

8 **Sec. 27. 38 MRSA §568-A, sub-§2**, as amended by PL 2013, c. 300, §11, is
9 further amended to read:

10 **2. Deductibles.** Except as provided in subsection 2-A, applicants eligible for
11 coverage by the fund under subsection 1 shall pay on a per occurrence basis the
12 applicable standard deductible amount specified in paragraph A. In addition to the
13 applicable standard deductible amount required under paragraph A, the applicant shall
14 pay on a per occurrence basis one or more of the conditional deductible amounts
15 specified in paragraphs B and C to the extent applicable.

16 A. Standard deductibles are calculated under this paragraph based on the number of
17 underground storage facilities or the capacity of gallons owned by the aboveground
18 storage facility owner at the time the covered discharge is discovered. Standard
19 deductibles are as follows.

20 (1) For expenses related to a leaking underground oil storage facility, the
21 deductible amount is determined in accordance with the following schedule:

22	23	24	25	26	27	28	29	30
	Number of underground storage							Deductible
	facilities owned by the facility owner							
	1							\$2,500
	2 to 5							5,000
	6 to 10							10,000
	11 to 20							25,000
	21 to 30							40,000
	over 30							62,500

31 (2) For expenses related to a leaking aboveground oil storage facility, the
32 deductible amount is determined in accordance with the following schedule:

33	34	35	36	37	38	39	40	41
	Total aboveground oil storage capacity							Deductible
	in gallons owned by the facility owner							
	Less than 1,320							\$500 <u>\$2,500</u>
	1,321 to 50,000							2,500 <u>5,000</u>
	50,001 to 250,000							5,000 <u>10,000</u>
	250,001 to 500,000							10,000 <u>25,000</u>
	500,001 to 1,000,000							25,000 <u>40,000</u>
	1,000,001 to 1,500,000							<u>40,000</u>

1 greater than ~~1,500,000~~ 1,000,000 62,500

2 (3) For facilities with both aboveground and underground tanks when the source
3 of the discharge can not be determined or when the discharge is from both types
4 of tanks, the standard deductible is the applicable amount under subparagraph (1)
5 or (2), whichever is greater.

6 (4) For aboveground tanks regulated by the Maine Fuel Board with less than 300
7 gallons' storage capacity, the standard deductible may be waived by the
8 commissioner upon submission of documentation of a passing ultrasonic
9 thickness test of the tank conducted within 12 months prior to the discharge.

10 B. Conditional deductibles for underground facilities and tanks are as follows.

11 (1) For nonconforming facilities and tanks, the deductible is \$10,000 for failure
12 to meet the compliance schedule in section 563-A, except that those facilities or
13 tanks required to be removed by October 1, 1989 have until October 1, 1990 to
14 be removed before they are considered out of compliance.

15 (2) For failure to pay registration fees under section 563, subsection 4, the
16 deductible is the total of all past due fees.

17 (3) For motor fuel storage and marketing and retail facilities, the deductibles are:

18 (a) Five thousand dollars for failure to comply with applicable design and
19 installation requirements in effect at the time of the installation or retrofitting
20 requirements for leak detection pursuant to section 564, subsections 1 and
21 1-A;

22 (b) Five thousand dollars for failure to comply with section 564, subsection
23 1-B and any rules adopted pursuant to that subsection;

24 (c) Five thousand dollars for failure to comply with section 564, subsection
25 2-A, paragraphs B to F and I, and any rules adopted pursuant to that
26 subsection; and

27 (d) Ten thousand dollars for failure to comply with section 564, subsection
28 2-A, paragraph H, and any rules adopted pursuant to that subsection.

29 (4) For consumptive use heating oil facilities with an aggregate storage capacity
30 of less than 2,000 gallons, the deductibles are:

31 (a) ~~Two~~ Five thousand dollars for failure to comply with section 565,
32 subsection 1, if applicable;

33 (b) ~~Two~~ Five thousand dollars for failure to comply with section 565,
34 subsection 2, regarding monitoring; and

35 (c) ~~Two~~ Five thousand dollars for failure to comply with section 565,
36 subsection 2, regarding any requirement to report evidence of a possible leak
37 or discharge.

38 (5) For consumptive use heating oil facilities with an aggregate storage capacity
39 of 2,000 gallons or greater, the deductibles are:

- 1 (a) ~~Five~~ Ten thousand dollars for failure to comply with section 565,
2 subsection 1, if applicable;
- 3 (b) ~~Five~~ Ten thousand dollars for failure to comply with section 565,
4 subsection 2, regarding monitoring; and
- 5 (c) ~~Ten~~ Fifteen thousand dollars for failure to comply with section 565,
6 subsection 2, regarding any requirement to report evidence of a possible leak
7 or discharge.
- 8 (6) For waste oil and heavy oil and airport hydrant facilities with discharges that
9 are not contaminated with hazardous constituents, the deductibles for failure to
10 comply with rules adopted by the board are:
- 11 (a) Five thousand dollars for rules regarding design and installation
12 requirements in effect at the time of the installation;
- 13 (b) Five thousand dollars for rules regarding retrofitting of leak detection
14 and corrosion protection, if applicable;
- 15 (c) Five thousand dollars for rules regarding overfill and spill prevention;
- 16 (d) Five thousand dollars for rules regarding the monitoring of cathodic
17 protection systems;
- 18 (e) Five thousand dollars for rules regarding testing requirements for tanks
19 and piping on evidence of a leak;
- 20 (f) Five thousand dollars for rules regarding maintenance of a leak detection
21 system; and
- 22 (g) Ten thousand dollars for rules regarding the reporting of leaks.
- 23 C. Conditional deductibles for aboveground facilities and tanks are as follows.
- 24 (1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal
25 pursuant to 16-219 CMR, chapter 34, the deductibles are:
- 26 (a) Five thousand dollars for failure to obtain a construction permit from the
27 Office of the State Fire Marshal, when required under Title 25, chapter 318
28 and 16-219 CMR, chapter 34 or under prior applicable law;
- 29 (b) Five thousand dollars for failure to design and install piping in
30 accordance with section 570-K and rules adopted by the department;
- 31 (c) Five thousand dollars for failure to comply with an existing consent
32 decree, court order or outstanding deficiency statement regarding violations
33 at the aboveground facility;
- 34 (d) Five thousand dollars for failure to implement a certified spill prevention
35 control and countermeasure plan, if required;
- 36 (e) Five thousand dollars for failure to install any required spill control
37 measures, such as dikes;
- 38 (f) Five thousand dollars for failure to install any required overfill
39 equipment;

- 1 (g) Five thousand dollars if the tank is not approved for aboveground use;
2 and
3 (h) Ten thousand dollars for failure to report any leaks at the facility.
4 (2) For aboveground tanks subject to the jurisdiction of the Maine Fuel Board,
5 the deductibles are:
6 (a) One hundred and fifty dollars for failure to install the facility in
7 accordance with rules adopted by the Maine Fuel Board and in effect at the
8 time of installation;
9 (b) Two hundred and fifty dollars for failure to comply with the rules of the
10 Maine Fuel Board;
11 (c) Two hundred and fifty dollars for failure to make a good faith effort to
12 properly maintain the facility; and
13 (d) Five hundred dollars for failure to notify the department of a spill.

14 The commissioner shall make written findings of fact when making a determination of
15 deductible amounts under this subsection. The commissioner's findings may be appealed
16 to the Clean-up and Response Fund Insurance Review Board, as provided in section
17 568-B, subsection 2-C. On appeal, the burden of proof is on the commissioner as to
18 which deductibles apply.

19 After determining the deductible amount to be paid by the applicant, the commissioner
20 shall pay from the fund any additional eligible clean-up costs and 3rd-party damage
21 claims up to \$1,000,000 for underground oil storage facilities and up to \$750,000 for all
22 other occurrences associated with activities under section ~~569-A~~ 551, subsection ~~8~~ 5,
23 paragraphs B, D and ~~J~~ K. The commissioner shall pay the expenses directly, unless the
24 applicant chooses to pay the expenses and seek reimbursement from the fund. The
25 commissioner may pay from the fund any eligible costs above \$1,000,000 for
26 underground oil storage facilities and above \$750,000 for all other occurrences, but the
27 commissioner shall recover these expenditures from the responsible party pursuant to
28 section ~~569-A~~ 551.

29 ~~An applicant found ineligible for fund coverage for failure to achieve substantial~~
30 ~~compliance under former subsection 1, paragraph B or failure to apply within 180 days of~~
31 ~~reporting the discharge may, on or before July 1, 1996, make a new application for fund~~
32 ~~coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all~~
33 ~~applicable deductible amounts in this subsection and the commissioner waives the~~
34 ~~180 day filing requirement pursuant to subsection 1.~~

35 **Sec. 28. 38 MRSA §568-A, sub-§3**, as enacted by PL 1989, c. 865, §15 and
36 affected by §§24 and 25, is amended to read:

37 **3. Exemptions from deductible.** The commissioner may waive the deductible
38 requirement for an applicant's personal residence if the commissioner determines that the
39 applicant does not have the financial resources to pay the deductible. The review board
40 shall adopt rules to determine the standards to be used to assess an applicant's ability to
41 pay this deductible.

1 **Sec. 29. 38 MRSA §568-A, sub-§6**, as enacted by PL 1993, c. 553, §1 and
2 affected by §7, is amended to read:

3 **6. Reimbursement of 3rd-party damages paid.** If a person claiming to have
4 suffered property damage or actual economic damage directly or indirectly as a result of a
5 discharge of oil to groundwater prohibited by section 543 files a claim for damages
6 against the owner or operator of an underground or aboveground oil storage tank in a
7 court of competent jurisdiction without simultaneously filing or previously having filed a
8 3rd-party damage claim pursuant to section ~~569-A~~ 551, the owner or operator may file a
9 claim with the commissioner to be reimbursed for damages paid or payable to that 3rd
10 party under a settlement or judgment. Such a claim for reimbursement must be filed and
11 processed as follows.

12 A. The claim for reimbursement must be filed with the commissioner. If the owner
13 or operator has not previously filed an application for fund coverage pursuant to
14 subsection 1, the person claiming reimbursement shall also make application. The
15 application must comply with the requirements of subsection 1 and must be
16 processed and judged by the standards set forth in that subsection except that it is not
17 required to be filed within 180 days of reporting the discharge.

18 B. If the person is eligible for fund coverage, the commissioner shall calculate the
19 amount of reimbursement to the owner or operator by determining whether each
20 amount claimed would be eligible for payment had the 3rd party applied directly to
21 the fund. Eligible amounts, minus any deductible that has not previously been met by
22 the owner or operator, must be paid to that owner or operator.

23 C. Appeals of decisions made under this subsection may be made to the Clean-up
24 and Response Fund Insurance Review Board.

25 **Sec. 30. 38 MRSA §568-A, sub-§7**, as amended by PL 2009, c. 319, §12, is
26 repealed.

27 **Sec. 31. 38 MRSA §568-B**, as amended by PL 2013, c. 22, §§1 and 2, is further
28 amended to read:

29 **§568-B. Clean-up and Response Fund Review Board created**

30 **1. Clean-up and Response Fund Review Board.** The Clean-up and Response Fund
31 Insurance Review Board, as established by Title 5, section 12004-G, subsection 11-A, is
32 created to hear and decide appeals from insurance claims-related decisions under section
33 568-A and monitor income and disbursements from the ~~Ground Water Oil Clean-up Fund~~
34 fund under section ~~569-A~~ 551. The review board consists of ~~40~~ 14 members appointed
35 for 3-year terms as follows:

36 A. Two persons representing the petroleum industry, appointed by the Governor, one
37 of whom is a representative of a statewide association of energy dealers;

38 A-1. Two persons, appointed by the Governor, who have expertise in oil storage
39 facility design and installation, oil spill remediation or environmental engineering;

- 1 B. Four members of the public, 2 appointed by the Governor, one appointed by the
- 2 President of the Senate and one appointed by the Speaker of the House of
- 3 Representatives. Of the 4 members, 2 of whom must have expertise in biological
- 4 science, earth science, engineering, insurance or law. The 4 members may not be
- 5 employed in or have a direct and substantial financial interest in the petroleum
- 6 industry;
- 7 C. The commissioner or the commissioner's designee; ~~and~~
- 8 D. The State Fire Marshal or the fire marshal's designee;
- 9 E. One member representing marine fisheries interests appointed by the President of
- 10 the Senate;
- 11 F. One member familiar with oil spill technology appointed by the Governor;
- 12 G. One member with expertise in coastal geology, fisheries biology or coastal
- 13 wildlife habitat appointed by the Governor; and
- 14 H. One member who is a licensed state pilot or a licensed merchant marine officer
- 15 appointed by the Governor.

16 Members other than those described in paragraphs ~~A, A-1~~ C and ~~B~~ D are entitled to

17 reimbursement for direct expenses of attendance at meetings of the review board or the

18 appeals panel.

19 **2. Powers and duties of review board.** The Clean-up and Response Fund

20 ~~Insurance~~ Review Board has the following powers and duties:

- 21 A. To hear appeals from insurance claims-related decisions of the commissioner and
- 22 the State Fire Marshal under section 568-A;
- 23 B. To adopt rules in accordance with Title 5, chapter 375, subchapter 2 and
- 24 guidelines necessary for the furtherance of the review board's duties and
- 25 responsibilities under this subchapter;
- 26 ~~C. To contract with the department for such assistance in fulfilling the review board's~~
- 27 ~~duties as the review board may require;~~
- 28 D. To monitor income and disbursements from the ~~Ground Water Oil Clean-up Fund~~
- 29 ~~fund~~ under section ~~569-A~~ 551 and adjust fees pursuant to section ~~569-A~~ 551,
- 30 subsection ~~5~~ 4, paragraph ~~E~~ F, as required to avoid a shortfall in the fund;
- 31 E. To, at such times and in such amounts as it determines necessary, and in
- 32 consultation with the department, direct the transfer of funds from the Underground
- 33 Oil Storage Replacement Fund to the ~~Ground Water Oil Clean-up Fund~~ fund; and
- 34 F. To review department priorities for disbursements from the ~~Ground Water Oil~~
- 35 ~~Clean-up Fund~~ fund and make recommendations to the commissioner on how the
- 36 fund should be allocated;
- 37 G. To review and comment on the State's marine oil spill contingency plan; and
- 38 H. To review and monitor issues for oil spill prevention and response and
- 39 recommend to the commissioner any regulatory changes that are appropriate.

1 **2-A. Meetings.** The Clean-up and Response Fund Insurance Review Board shall
2 meet 6 times per year unless the review board votes not to hold a meeting. Action may
3 not be taken unless a quorum is present. A quorum is ~~6~~ 8 members.

4 **2-B. Chair.** The review board shall annually choose a member to serve as chair of
5 the review board.

6 **2-C. Appeals to review board.** An applicant aggrieved by an insurance claims-
7 related decision under section 568-A, including but not limited to decisions on eligibility
8 for coverage, eligibility of costs and waiver and amount of deductible, may appeal that
9 decision to the Clean-up and Response Fund Insurance Review Board. The appeals panel
10 is composed of the public members appointed under subsection 1, paragraph B. The
11 appeals panel shall hear and decide the appeal. Except as provided in review board rules,
12 the appeal must be filed within 30 days after the applicant receives the decision made
13 under section 568-A. The appeals panel must hear an appeal at its next meeting
14 following receipt of the appeal unless the appeal petition is received less than 30 days
15 before the meeting or unless the appeals panel and the aggrieved applicant agree to meet
16 at a different time. If the appeals panel overturns the decision made under section 568-A,
17 reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant
18 in pursuing the appeal to the review board must be paid from the fund. Reasonable
19 attorney's fees include only those fees incurred from the time of an insurance
20 claims-related decision forward. Decisions of the appeals panel are subject to judicial
21 review pursuant to Title 5, chapter 375, subchapter 7.

22 **2-D. Report; adequacy of fund.** ~~On or before February 15th of each year~~
23 ~~Beginning on April 15, 2015 and every other year thereafter,~~ the Clean-up and Response
24 Fund Insurance Review Board, with the cooperation of the commissioner, shall report to
25 the joint standing committee of the Legislature having jurisdiction over natural resources
26 matters on the department's and the review board's experience administering the ~~Ground~~
27 ~~Water Oil Clean-up Fund fund,~~ clean-up activities and 3rd-party damage claims. The
28 report must include an assessment of the adequacy of the fund to cover anticipated
29 expenses and any recommendations for statutory change. ~~The report also must include an~~
30 ~~assessment of the adequacy of the Underground Oil Storage Replacement Fund and the~~
31 ~~Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for~~
32 ~~statutory change.~~ To carry out its responsibility under this subsection, the review board
33 may order an independent audit of disbursements from the ~~Ground Water Oil Clean-up~~
34 ~~Fund, the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund~~
35 fund.

36 **2-E. Staff support.** The commissioner shall provide the Clean-up and Response
37 Fund Review Board with staff support.

38 ~~**3. Repeal date.** This section is repealed December 31, 2015.~~

39 **Sec. 32. 38 MRSA §569-A,** as amended PL 2013, c. 300, §12, is repealed.

40 **Sec. 33. 38 MRSA §569-B,** as amended by PL 2009, c. 501, §12, is repealed.

1 **Sec. 34. 38 MRSA §570, first ¶**, as repealed and replaced by PL 2009, c. 319,
2 §16 and affected by §§22 and 23, is amended to read:

3 The intent of this subchapter is to provide the means for rapid and effective cleanup
4 and to minimize direct and indirect damages and the proliferation of 3rd-party claims.
5 Accordingly, each responsible party is jointly and severally liable for all disbursements
6 made by the State pursuant to section ~~569-A~~ 551, subsection ~~8~~ 5, paragraphs A, B, D, E,
7 ~~H~~ I and ~~J~~ K, or other damage incurred by the State, except for costs found by the
8 commissioner to be eligible for coverage under section 568-A. The term "other
9 damages," as used in this paragraph, includes interest computed at 15% a year from the
10 date of expenditure and damage for injury to, destruction of, loss of or loss of use of
11 natural resources; and the reasonable costs of assessing natural resources damage ~~and the~~
12 ~~costs of preparing and implementing a natural resources restoration plan.~~ The
13 commissioner shall demand reimbursement of costs and damages paid by the department
14 from state or federal funds as provided under section ~~569-A~~ 551, subsection ~~40~~ 6 except
15 for amounts that are eligible for coverage by the fund under this subchapter. Payment
16 must be made promptly by the responsible party or parties upon whom the demand is
17 made. If payment is not received by the State within 30 days of the demand, the Attorney
18 General may file suit in the Superior Court or the department may file suit in District
19 Court and, in addition to relief provided by other law, may seek punitive damages as
20 provided in section 568. Notwithstanding the time limits stated in this paragraph, neither
21 a demand nor other recovery efforts against one responsible party may relieve any other
22 responsible party of liability. ~~This paragraph is repealed December 31, 2015.~~

23 **Sec. 35. 38 MRSA §570, 2nd ¶**, as enacted by PL 2009, c. 319, §17, is repealed.

24 **Sec. 36. 38 MRSA §570-A**, as amended by PL 2009, c. 319, §18, is repealed.

25 **Sec. 37. 38 MRSA §570-B**, as amended by PL 2009, c. 319, §19, is repealed.

26 **Sec. 38. 38 MRSA §570-I**, as amended by PL 2009, c. 319, §20, is further
27 amended to read:

28 **§570-I. Budget approval**

29 The commissioner shall submit budget recommendations for disbursements from the
30 fund in accordance with section ~~569-B~~ 551, subsection 5, paragraphs A, C, F and ~~G~~ H for
31 each biennium. The budget must be submitted in accordance with Title 5, sections 1663
32 to 1666. The State Controller shall authorize expenditures from the fund as approved by
33 the commissioner. Expenditures pursuant to section ~~569-B~~ 551, subsection 5, paragraphs
34 B, D ~~and~~ E ~~and I to O~~ may be made as authorized by the State Controller following
35 approval by the commissioner.

36 ~~This section takes effect December 31, 2015.~~

37 **Sec. 39. 38 MRSA §570-J**, as amended by PL 2009, c. 319, §21, is further
38 amended to read:

1 **§570-J. Personnel and equipment**

2 The commissioner shall establish and maintain at appropriate locations employees
3 and equipment that, in the commissioner's judgment, are necessary to carry out this
4 subchapter. The commissioner, subject to the Civil Service Law, may employ personnel
5 necessary to carry out the purposes of this subchapter and shall prescribe the duties of
6 those employees. The salaries of those employees and the cost of that equipment must be
7 paid from the ~~Ground Water Oil Clean-up Fund~~ fund established by this subchapter 2-A.

8 ~~This section is effective December 31, 2015.~~

9 **Sec. 40. 38 MRSA §570-L**, as enacted by PL 1993, c. 363, §18 and affected by
10 §21, is amended to read:

11 **§570-L. Budget approval; aboveground tanks program**

12 This section establishes a budget process for expenses of the State Fire Marshal and
13 the Clean-up and Response Fund Insurance Review Board.

14 **1. Clean-up and Response Fund Review Board.** The chair of the Clean-up and
15 Response Fund Insurance Review Board shall submit budget recommendations for
16 disbursements from the fund in accordance with section ~~569-A~~ 551, subsection ~~8~~ 5,
17 paragraph ~~K~~ L. The budget must be submitted in accordance with Title 5, sections 1663
18 to 1666.

19 **2. State Fire Marshal.** The State Fire Marshal shall submit budget
20 recommendations for disbursement from the fund in accordance with section ~~569-A~~ 551,
21 subsection ~~8~~ 5, paragraph ~~L~~ M. The budget must be submitted at the time the State Fire
22 Marshal's budget is otherwise presented.

23 **Sec. 41. 38 MRSA §1396**, as enacted by PL 2007, c. 569, §6, is amended to read:

24 **§1396. Financial assistance for upgrading aboveground oil storage tanks or facilities**

25 The commissioner may disburse money from the Maine Ground Water-Oil and
26 Surface Waters Clean-up and Response Fund to retrofit, repair or replace aboveground oil
27 storage tanks or aboveground oil storage facilities in a wellhead protection zone when the
28 commissioner determines that action is necessary to abate an imminent threat to the well.
29 Disbursements must be made in the manner provided under section ~~569-A~~ 551,
30 subsection ~~8~~ 5, paragraphs ~~M~~ and N and O and are subject to the annual disbursement
31 limitations of those paragraphs.

32 **Sec. 42. 38 MRSA §1398**, as enacted by PL 2007, c. 569, §6, is amended to read:

33 **§1398. Eligibility for clean-up funds**

34 Clean-up costs and 3rd-party damages resulting from discharges from an
35 aboveground oil storage facility or an underground oil storage facility installed in
36 violation of section 1393 are not eligible for coverage by the Maine Ground Water-Oil

1 and Surface Waters Clean-up and Response Fund under sections 551 and 568-A and 569-
2 A.

3

SUMMARY

4 This bill combines current provisions of law related to the Ground Water Oil Clean-
5 up Fund and the Maine Coastal and Inland Surface Oil Clean-up Fund. It streamlines
6 administration of oil clean-up funds and stabilizes funding for clean-up activities. It
7 improves government administration by combining 2 boards with expertise in oil spill
8 prevention and cleanup and responsibility for fund oversight into one, and it streamlines
9 fee requirements from 2 separate amounts for each product type into one.