

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985
Chapters 384-End

AND AT THE

FIRST SPECIAL SESSION

November 13, 1985

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
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J.S. McCarthy Co., Inc.
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PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED
and
FIRST SPECIAL SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

attorney or, in their absence, to the Attorney General or one of his assistants.

Sec. 23. 34-B MRSA §1207, sub-§1, ¶B-1 is enacted to read:

B-1. Information shall be disclosed to the Department of Human Services for the purpose of cooperating in an investigation or any other activity pursuant to Title 15, chapter 507, or Title 22, chapter 1071, pursuant to an agreement between the department and the Department of Human Services. The agreement, specifying the circumstances and conditions by which disclosure shall be made, shall be promulgated as rules by the department in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375;

Effective September 19, 1985.

CHAPTER 496

S.P. 641 - L.D. 1655

AN ACT to Amend Certain Provisions of the Oil
Discharge Prevention and Pollution
Control Act and to Establish a New Act
Relating to Underground Oil Storage
Facilities.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, regulating the installation and operation of existing, new and replacement underground oil storage tanks and facilities is important in order to prevent contamination of valuable ground water and well water resources and to provide the means to clean-up contamination by leaking underground tanks; and

Whereas, certain obligations and expenses incident to the operation of departments and agencies will become due and payable on or immediately after July 1, 1985; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of

the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶(40) is enacted to read:

(40) Board of Underground Expenses only 32 MRSA §10001
Oil Storage Tank
Installers

Sec. 2. 32 MRSA c. 105 is enacted to read:

CHAPTER 105

UNDERGROUND OIL STORAGE TANK INSTALLERS

§10001. Declaration of purpose

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil storage tank installers and to assure the availability of underground oil storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil storage tank installation services.

§10002. Definitions

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

1. Board. "Board" means the Board of Underground Oil Storage Tank Installers established under this chapter.

2. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

3. Department. "Department" means the Department of Environmental Protection.

4. Oil. "Oil" means oil, petroleum products and their by-products of any kind and in any form includ-

ing, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

5. Public member. "Public member" means that that person may not be a past or present member of the occupation or profession regulated by the board, may not have been professionally affiliated with that occupation or profession for a period of 5 years preceding appointment to the board and may not have had in the past a material or financial interest in either the provision of services provided by this occupation or profession or an activity directly related to this occupation or profession, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment.

6. Underground oil storage tank. "Underground oil storage tank," for purposes of this chapter, means any tank or container, 10% or more of which is beneath the surface of the ground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of oil as defined in subsection 4. The term "underground oil storage tank" does not include tanks or containers, associated piping or dispensing facilities that are located in an underground area if these tanks or containers, associated piping or dispensing facilities are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

7. Underground oil storage tank installer. "Underground oil storage tank installer" means a person certified under this chapter to install underground oil storage tanks.

§10003. Board of underground oil storage tank installers; establishment; compensation

1. Establishment and membership. There is established within the Department of Environmental Protection, a Board of Underground Oil Storage Tank Installers. The board shall consist of 7 members appointed by the Governor as follows: One from the Department of Environmental Protection; one from either the Maine Oil Dealer's Association, the Pine Tree Gas Retailers Association or the Maine Petroleum Association; one underground oil storage tank installer; one from either the Oil and Solid Fuel Board, the Plumber's Examining Board or the State Board of Certification for Geologists and Soil Scientists; one from the Board of Environmental Protection; and 2 public members.

2. Terms of appointment. The Governor, within 60 days following the effective date of this chapter, shall appoint 3 board members for a term of one year, 3 for a term of 2 years and one for a term of 3 years. Appointments made thereafter shall be for 3-year terms, but no person may be appointed to serve more than 2 consecutive terms at any one time. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar days of the year in which they are appointed, before commencing the terms prescribed by this section.

Any member of the board may be removed from office for cause by the Governor. A member may not serve more than 2 full successive terms provided that, for this purpose only, a period actually served which exceeds $1/2$ of the 3-year term shall be deemed a full term.

3. Meetings. The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Other meetings may be convened at the call of the chairman or the written request of any 2 board members. A majority of the members of the board shall constitute a quorum for all purposes.

4. Compensation. Members of the board shall receive no compensation for their services, but are entitled to expenses on the same basis as provided for state employees.

§10004. Board of Underground Oil Storage Tank Installers; powers and duties

1. Powers. The board shall administer and enforce this chapter and evaluate the qualifications of applicants for certification. The board may issue subpoenas, examine witnesses, administer oaths and may investigate or cause to be investigated any complaints made to it or any cases of noncompliance with or violation of this chapter.

2. Rules. The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil storage tank installation.

3. Hearings. Hearings may be conducted by the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of certification, or as otherwise deemed necessary to the fulfillment of its responsibilities under this chapter. Hearings shall be conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable.

4. Records. The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions.

5. Contracts. The board may enter into contracts to carry out its responsibilities under this chapter.

6. Reports. No later than August 1st of each year, the board shall submit to the commissioner, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with such comments and recommendations as the commissioner deems essential.

§10005. Board of Underground Oil Storage Tank Installers; administrative provisions

1. Officers. The board shall appoint a secretary and may appoint other officers as it deems necessary.

2. Employees. With the advice of the board, the commissioner may appoint, subject to the Personnel Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the department and under the administrative and supervisory direction of the commissioner.

3. Budget. The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665.

§10006. Certification

1. Certification required. No person may practice, or hold himself out as authorized to practice, as an underground oil storage tank installer in this State or use the words "underground oil storage tank installer" or other words or letters to indicate that the person using the words or letters is a certified underground oil storage tank installer practitioner unless he is certified in accordance with this chapter.

2. Individual. Only an individual may be certified under this chapter.

§10007. Persons and practices exempt

Nothing in this chapter may be construed as preventing or restricting the practice, services, or activities of:

1. Certified persons. Any person certified in this State by any other law from engaging in the profession or occupation for which he is certified.

§10008. Reciprocity

A person who is a resident of the State and has been certified in another state as an underground oil storage tank installer may, upon payment of a fee as established under section 10012, obtain a certification as an underground oil storage tank installer, provided that a person submits satisfactory evidence of certification as an underground oil storage tank installer in another state under qualifications equivalent to those specified in this chapter.

§10009. Certification requirements for persons working as underground oil storage tank installers

1. Certification requirements for persons now working as underground oil storage tank installers. A certificate may be granted to those persons who have been employed as underground oil storage tank installers for at least 2 years preceding creation of this board, by one of the following means:

A. The person has passed an oral test based on Title 38, chapter 3, subchapter II-B, and any rules promulgated thereunder by the Board of Environmental Protection concerning underground oil storage tank installations;

B. The person has passed a written test based on Title 38, chapter 3, subchapter II-B, and any rules promulgated thereunder by the Board of Environmental Protection concerning underground oil storage tank installations; or

C. The person has completed successful installation of an underground oil storage tank under the supervision of a designated representative of the Department of Environmental Protection.

§10010. Requirements for certification

An applicant applying for certification as an underground oil storage tank installer shall file a written application provided by the board, showing to the satisfaction of the board that he meets the following requirements.

1. Residence. An applicant need not be a resident of this State.

2. Character. An applicant shall have demonstrated ethical practice.

3. Education and examination. An applicant shall meet the following requirements:

A. He shall have passed a written examination based on Title 38, chapter 3, subchapter II-B, and any rules promulgated thereunder by the Board of Environmental Protection concerning the installation of underground oil storage tanks; and

B. He shall have completed successful installation of an underground oil storage tank under the supervision of a designated representative of the Department of Environmental Protection.

§10011. Examination for certification

1. Requirement fees. Only a person satisfying the requirements of section 10010, subsections 1 and 2, may apply for examination in such a manner as the board prescribes. The application shall be accompanied by the nonrefundable fee prescribed by section 10012. A person who fails either part of the examination specified in section 10010, subsection 3, may apply for reexamination upon payment of the prescribed fee.

2. Content. The written examination shall test the applicant's knowledge of the skills and knowledge relating to storage tank installation and such other subjects as the board requires to determine the applicant's fitness to practice. The board shall approve an examination for underground oil storage tank installers and establish standards for an acceptable performance.

3. Time and place. Applicants for certification shall be examined at a time and place and under such supervision as the board requires. Examinations shall be given at least twice each year at such places as the board determines.

The board shall give reasonable public notice of these examinations in accordance with its rules.

4. Scores; review. Applicants may obtain their examination scores and may review their papers in accordance with rules as the board may establish.

§10012. Fees

1. Amount. Fees may be established by the board in amounts which are reasonable and necessary for their respective purposes.

2. Disposal of fees. All fees received by the board shall be paid to the Treasurer of State to be used for carrying out this chapter. Any balance of fees shall not lapse but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

§10013. Issuance of certification

The board shall issue a certificate to any person who meets the requirements of this chapter upon payment of the prescribed certification fee.

§10014. Renewal of certification

1. Biennial renewal. Any certificate issued under this chapter is subject to biennial renewal and shall expire, unless renewed in the manner prescribed by the rules of the board, upon the payment of a renewal fee. Certificates may be renewed up to 30 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than 30 days after the certification renewal date is subject to all requirements governing new applicants under this chapter, except that the board may, in its discretion, giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of that expiration.

2. Inactive status. Upon request, the board shall grant inactive status to a certified person who does not practice or present himself as an underground oil tank installer and maintains any continuing competency requirements established by the board.

3. Continuing competency. Each certification renewal shall be accompanied with evidence of continuing competencies as determined by the board.

§10015. Investigation; refusal of license or renewal; disciplinary action

1. Complaints; investigations. The board shall investigate or cause to be investigated a complaint made on its own motion or on written complaint filed with the board and all cases of noncompliance with or violation of this chapter or of any rules adopted by the board.

2. Disciplinary action; grounds. The board may suspend or revoke a certificate pursuant to Title 5, section 10004. The board may refuse to issue or renew a certificate or the Administrative Court may suspend, revoke or refuse to renew a certificate of any certified person. The following shall be grounds for an action to modify, suspend, revoke or refuse to issue or renew a certificate:

A. The practice of any fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered within the scope of the certificate issued;

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil storage tank installation, or violation of any standard of professional behavior which has been established by the board;

C. Subject to the limitation of Title 5, chapter 341, conviction of a crime which involves dishonesty or false statement or which relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or

D. Any violation of this chapter or any rule adopted by the board.

3. Criminal penalty. Any person who violates a provision of this chapter or any lawful order or rule adopted by the board is guilty of a Class E crime.

4. Injunction. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

5. Reinstatement. An application for reinstatement may be made to the board one year from the date of revocation of a certificate. The board may accept or reject the application and hold a hearing to consider the reinstatement.

Sec. 3. 38 MRSA §347, sub-§7, as enacted by PL 1983, c. 796, §16, is amended to read:

7. Right of inspection and entry. Employees of the Department of Environmental Protection shall have the authority to enter any property at reasonable hours, and to enter any building with the consent of the property owner, occupant or agent, to inspect the property or structure ~~for~~, to take samples and to conduct tests, as appropriate, to determine compliance with any provision of the laws administered by the department, or the terms and conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection.

Sec. 4. 38 MRSA §361-A, sub-§2-B is enacted to read:

2-B. Handle. "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

Sec. 5. 38 MRSA §541, as amended by PL 1983, c. 785, §9, is further amended to read:

§541. Findings; purpose

The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities.

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses.

The Legislature further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters ~~is a~~ and the transportation and other handling of oil in inland areas of the State are hazardous undertakings; that

spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer and, storage and other handling of such products pose threats of great danger and damage to the marine, estuarine, inland surface water and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine-related marine and inland surface water related activities; and to the beauty of the Maine coast and inland waters; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as set forth in this subchapter and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring and other handling of oil, petroleum products and their by-products and related activities.

The Legislature further finds and declares that significant quantities of oil are being stored in underground storage facilities; that leaks and unlicensed discharges from such facilities pose a significant threat to the quality of the waters of the State, including the ground water resources; that protection of the quality of these waters is of the highest importance; and that their protection requires proper design and installation of new and replacement underground storage facilities; and monitoring, maintenance and remedial action on the existing facilities.

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Board of Environmental Protection and the Department of Environmental Protection by conferring upon the board the exclusive power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from those occurrences may be promptly made whole; and to establish a fund to provide for the inspection and supervision of those activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds and declares that the preservation of the public uses referred to in this subchapter is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing

for the public safety, and that the state's interest in such preservation outweighs any burdens of absolute liability imposed by the Legislature upon those engaged in transferring or other handling of oil, petroleum products and their by-products and related activities.

Sec. 6. 38 MRSA §542, sub-§5, as enacted by PL 1969, c. 572, §1, is amended to read:

5. Fund. "Fund" shall mean means the Maine Coastal Protection and Inland Surface Oil Clean-up Fund.

Sec. 7. 38 MRSA §542, sub-§10-A, as enacted by PL 1983, c. 785, §10, is repealed.

Sec. 8. 38 MRSA §543, first ¶, as amended by PL 1983, c. 785, §11, is further amended to read:

The discharge of oil into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into or upon any lake, pond, river, stream, sewer, surface water drainage, ground water or other waters of the State or any public or private water supply or onto lands adjacent to, on, or over such waters of the State is prohibited.

Sec. 9. 38 MRSA §545-A, as enacted by PL 1983, c. 785, §12, is repealed.

Sec. 10. 38 MRSA §546, sub-§4, ¶¶I and J, as enacted by PL 1983, c. 785, §13, are repealed.

Sec. 11. 38 MRSA §548, as amended by PL 1983, c. 483, §9, is further amended to read:

§ 548. Removal of prohibited discharges

Any person discharging or suffering the discharge of oil, petroleum products or their by-products in the manner prohibited by section 543 shall immediately undertake to remove that discharge to the ~~board's~~ department's satisfaction. Notwithstanding the above requirement, the department may undertake the removal or cleanup of that discharge and may retain agents and contracts for those purposes who shall operate under the direction of the ~~board department~~. The department may implement remedies to restore or replace water supplies contaminated by a discharge of oil, petroleum products or their by-products prohibited by section 543, including all discharges from interstate pipelines, using the most cost-effective alternative

that is technologically feasible and reliable and which effectively mitigates or minimizes damages to, and provides adequate protection of, the public health, welfare and the environment.

Any unexplained discharge of oil, petroleum products or their by-products within state jurisdiction or discharge of oil, petroleum products or their by-products occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the department. Any expenses involved in the removal or cleanup of discharges, including the restoration of water supplies contaminated by discharges from interstate pipelines and other discharges prohibited by section 543, whether by the person causing the same, the person reporting the same or the board by itself or through its agents or contractors, shall be paid in the first instance from the Maine Coastal ~~Protection~~ and Inland Surface Oil Clean-up Fund and any reimbursements due that fund shall be collected in accordance with section 551.

Sec. 12. 38 MRSA §549, as amended by PL 1983, c. 483, §10, is further amended to read:

§ 549. Personnel and equipment

The department shall establish and maintain at such ports within the State, and other places as it shall determine, such employees and equipment as in its judgment may be necessary to carry out this subchapter. The commissioner, subject to the Personnel Law, may employ such personnel as may be necessary to carry out the purposes of this subchapter, and shall prescribe the duties of those employees. The salaries of those employees and the cost of that equipment shall be paid from the Maine Coastal ~~Protection~~ and Inland Surface Oil Clean-up Fund established by this subchapter. The department and the Maine Mining Bureau shall periodically consult with each other relative to procedures for the prevention of oil discharges into the coastal waters of the State from offshore drilling production facilities. Inspection and enforcement employees of the department in their line of duty under this subchapter shall have the powers of a constable.

Sec. 13. 38 MRSA §551, as amended by PL 1983, c. 483, §§11 to 15, is further amended to read:

§551. Maine Coastal and Inland Surface Oil Clean-up Fund

The Maine Coastal ~~Protection~~ and Inland Surface

Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund shall be limited to \$4,000,000 until July 1, 1978 \$4,500,000, the sum of which shall include all funds credited under this section and any funds loaned to the Ground Water Oil Clean-up Fund established pursuant to subchapter II-B. ~~Thereafter, the fund shall be limited to \$6,000,000 and the~~ The Department of Environmental Protection shall collect fees in accordance with subsection 4. To this fund shall be credited all license fees, penalties, reimbursements and other fees and charges related to this subchapter, and to this fund shall be charged any and all expenses of the department related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, restoration of water supplies and 3rd party damages covered by this subchapter.

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

1. Research and development. The Legislature may allocate not more than \$100,000 per annum of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such allocations shall be made in accordance with section 555.

2. Third party damages. Any person, claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil, prohibited by section 543, including all discharges of oil from interstate pipelines, hereinafter called the claimant, may apply within 6 months after the occurrence of such discharge to the board stating the amount of damage alleged to be suffered as a result of such discharge. The board shall prescribe appropriate forms and details for the applications. The board may, upon petition and for good cause shown, waive the 6 months' limitation for filing damage claims.

A. If the claimant, the board and the person causing the discharge can agree to the damage

claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board can agree to the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Protection and Inland Surface Oil Clean-up Fund.

B. If the claimant, the board and the person causing the discharge cannot agree as to the amount of the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

C. Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

D. Damage claims arising under this subchapter shall be recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

E. Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of the federal courts against the person causing or otherwise responsible for the discharge.

2-A. Exceptions; 3rd party damage claims. Subsection 2, 3rd party damages, shall not apply to waters of the State classified under sections 368, 369 and 371, except those waters below head of tide until July 1, 1978.

3. Board of Arbitration. The Board of Arbitration shall consist of 3 persons, one to be chosen by the person determined in the first instance by the board to have caused the discharge, one to be chosen by the board to represent the public interest and one person chosen by the first 2 appointed members to serve as a neutral arbitrator. The determination by the board of the person causing the discharge is not

an appealable order. The neutral arbitrator shall serve as chairman. If the 2 arbitrators fail to agree upon, select and name the neutral arbitrator within 10 days after their appointment then the board shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

A. No member of the board shall serve as an arbitrator.

B. A party determined by the board to have caused a discharge shall appoint an arbitrator within such period of time as the board may by regulation prescribe. In the event that the party shall fail to select its arbitrator within 10 days after receipt of notice from the board that such selection is necessary, the board shall request the American Arbitration Association to select an arbitrator to represent the interest of the party in the arbitration proceedings.

In the case where the person causing the discharge is unknown, the board shall request the American Board of Arbitration to appoint an arbitrator to represent the interest of the unknown party.

C. One Board of Arbitrators shall be established for and hear and determine all claims arising from or related to a common single discharge.

D. Hearings before Boards of Arbitrators shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. The Board of Arbitration shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

E. Determinations made by a majority of the Board of Arbitration shall be final, and such determinations may be subject to review by a Justice of the Superior Court but only as to matters relating to abuse of discretion by the Board of Arbitration. A party seeking review of a Board of Arbitration determination must file an appeal in the Superior Court within 30 days of the Board of Arbitration determination.

F. Representation on the Board of Arbitration shall not be deemed an admission of liability for the discharge.

G. If the final determination of the Board of Arbitration includes a damage award, the Board of Arbitration shall certify the amount of the damage award and the name of the party claimant to receive the award to the Treasurer of State. The Treasurer of State shall pay that amount to the party claimant from the Maine Coastal Protection and Inland Surface Oil Clean-up Fund no sooner than 35 days after the date of the final determination of the Board of Arbitration. If the determination of the Board of Arbitration is appealed pursuant to paragraph E, the Treasurer of State shall withhold payment of the damage award until a final judgment on the appeal is entered, at which time the Treasurer of State shall pay any damage awards according to the terms of the final judicial judgment, with interest at the commercial rate as established by the Treasurer of State calculated from the date of the Board of Arbitration's final determination.

4. Funding.

A. License fees shall be determined on the basis of 1¢ per barrel of oil 1 1/2¢ per barrel of unrefined crude oil, 1¢ per barrel of gasoline and 1/2¢ per barrel of all other refined oil, petroleum products and their by-products, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, transferred by the licensee during the licensing period and shall be paid monthly by the licensee on the basis of records certified to the department; provided that during such time as any bonds issued pursuant to private and special law 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement shall be inadequate for that purpose, the license fee shall be determined on the basis of 2¢ per barrel. License fees shall be paid to the department and upon receipt by it credited to the Maine Coastal Protection and Inland Surface Oil Clean-up Fund.

B. Whenever the balance in the fund has reached the limit provided under this subchapter, license fees shall be proportionately reduced to cover only administrative expenses and sums allocated to research and development; provided that the license fees shall continue without reduction during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement thereunder shall be inadequate for such purpose.

C. All sums received by the department when the balance in the fund has reached \$4,000,000 shall, after deduction of administrative expenses and sums allocated to research and development, promptly be remitted to the Treasurer of State to be held distinct from all other moneys of the State for the payment of interest and debt retirement pursuant to Private and Special Law 1969, chapter 239, section 5. When there has been no interest or debt incurred pursuant to Private and Special Law 1969, chapter 239, section 5, or upon payment of all interest and debt so incurred, the Treasurer of State shall credit to the fund all sums received according to this subchapter.

5. Disbursements from fund. Moneys Money in the Maine Coastal Protection and Inland Surface Oil Clean-up Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the board related to the enforcement of this subchapter, and any loans to the Ground Water Oil Clean-up Fund made pursuant to section 569;

B. All costs involved in the removal of oil, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products covered by this subchapter, including all discharges from interstate pipelines and other discharges prohibited by section 543;

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

D. Payment of 3rd party claims awarded in accordance with this section;

E. Payment of costs of arbitration and arbitrators;

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

G. Payments to Treasurer of State pursuant to subsection 4, paragraph B; and

H. Sums, up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 555 for payment of costs for studies of the environmental

impacts of discharges prohibited by section 543 which may have adverse economic effects and which occur subsequent to such allocation, when such studies are deemed necessary by the commissioner.

6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund. The department shall seek recovery to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes, unless the department finds the amount involved too small or the likelihood of success too uncertain; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal ~~Protection~~ and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

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

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

C. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection; and

D. The department may file claims with appropriate federal agencies to recover for the use of the fund all disbursement from the fund in connection with a prohibited discharge.

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

A. An act of war;

B. An act of government, either State, Federal or municipal, except insofar as the act was pursuant to section 548;

C. An act of God, which shall mean an unforeseeable act exclusively occasioned by the

violence of nature without the interference of any human agency.

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

Sec. 14. 38 MRSA c. 3, sub-c. II-B is enacted to read:

SUBCHAPTER II-B

UNDERGROUND OIL STORAGE FACILITIES AND
GROUND WATER PROTECTION

§561. Findings; purpose

The Legislature finds that significant quantities of oil are being stored in underground storage facilities; that leaks and unlicensed discharges from these facilities pose a significant threat to the quality of the waters of the State, including the ground water resources; that protection of the quality of these waters is of the highest importance; and that their protection requires proper design and installation of new and replacement underground oil storage facilities, as well as monitoring, maintenance and operating procedures for existing, new and replacement facilities.

The Legislature intends by the enactment of this subchapter to exercise the police power of the State through the Board of Environmental Protection and the Department of Environmental Protection by conferring upon the board and the department the power to deal with the hazards and threats of danger and damage posed by the storage and handling of oil in underground facilities and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from these occurrences may be promptly made whole; to establish a fund to provide for the investigation, mitigation and removal of discharges or threats of discharge of oil from underground storage facilities, including the restoration of contaminated water supplies; and to guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds that preservation of the ground water resources and of the public uses referred to in this subchapter is of grave public in-

terest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety and that the State's interest in this preservation outweighs any burdens of absolute liability imposed by the Legislature in this subchapter upon those engaged in the storage of oil, petroleum products and their by-products in underground storage facilities.

§562. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Barrel. "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

2. Board. "Board" means the Board of Environmental Protection.

3. Department. "Department" means the Commissioner of Environmental Protection or his staff.

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

5. Existing underground oil storage facility or tank. "Existing underground oil storage facility" and "existing underground oil storage tank" means any such facility or tank, as defined in subsections 13 and 14, fully installed as of March 1, 1985, and the location of which has not changed.

6. Fund. "Fund" means the Ground Water Oil Clean-up Fund.

7. Leak. "Leak" means a loss or gain of .05 gallons or more per hour at a pressure of 4 pounds per square inch gauge, as determined by a precision test.

8. Oil. "Oil" means oil, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

9. Person. "Person" means any natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, governmental entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.

10. Responsible party. "Responsible party" means any one or more of the following persons:

A. The owner or operator of the underground oil storage facility where a prohibited discharge has occurred;

B. The person to whom the underground oil storage facility where a prohibited discharge has occurred is registered;

C. Any person other than those identified in paragraph A or B who caused the discharge of oil or who had custody or control of the oil at the time of the discharge.

11. Secondary containment. "Secondary containment" means a system installed so that any material that is discharged or has leaked from the primary containment is prevented from reaching the soil or ground water outside the system for the anticipated period of time necessary to detect and recover the discharged material. Such a system may include, but is not limited to, impervious liners, double walled tanks, impervious soil treatments or any other method demonstrated to the satisfaction of the department to be technically feasible and effective.

12. Sensitive geologic areas. "Sensitive geologic areas" means significant ground water aquifers and primary sand and gravel recharge areas, as defined in section 482, locations within 1,000 feet of a public drinking water supply and locations within 300 feet of a private drinking water supply.

13. Underground oil storage facility. "Underground oil storage facility," also referred to as "facility," means any underground oil storage tank or tanks, as defined in subsection 14, together with associated piping and dispensing facilities located under any land at a single location and used, or intended to be used, for the storage or supply of oil, as defined in this subchapter.

14. Underground oil storage tank. "Underground oil storage tank," also referred to as "tank," means any container, 10% or more of which is beneath the surface of the ground and which is used, or intended to be used, for the storage or supply of oil as defined in this subchapter, but does not include any tanks situated in an underground area if these tanks or containers are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

§563. Registration of underground oil storage tanks

1. Prohibition on unregistered tanks. The following prohibition on unregistered tanks applies.

A. No person may install, or cause to be installed, a new or replacement underground oil storage tank without first having registered the tank with the department in accordance with the requirements of subsection 2, and having paid the registration fee in accordance with the requirements of subsection 4, at least 5 business days prior to installation. If compliance with this time requirement is impossible due to an emergency situation, the owner or operator of the facility at which the new or replacement tank is to be installed shall inform the department as soon as the emergency becomes known.

The owner or operator of the facility shall also promptly submit upon completion a copy of the registration form to the fire department in whose jurisdiction the underground tank is located.

B. No person may operate, maintain or store oil in an underground oil storage facility after May 1, 1986, unless each underground oil storage tank at that facility is registered with the department.

2. Information required for registration. The owner or operator of an underground oil storage tank shall provide the department with the following information on a form in triplicate to be developed and provided by the department; one copy to be submitted to the department, one copy to be promptly submitted upon completion to the fire department in whose jurisdiction the underground tank is located and one copy to be retained by the owner or operator:

A. The name, address and telephone number of the owner of the underground oil storage tank to be registered;

B. The name, address and telephone number of the person having responsibility for the operation of the tank to be registered;

C. A description of the location of the facility and the location of the tank or tanks at that facility;

D. Whether the location of any tank at the facility is within 1,000 feet of a public drinking water supply or within 300 feet of a private drinking water supply;

E. The size of the tank to be registered;

F. The type of tank or tanks and piping at the facility and the type of product stored or contained in the tank or tanks and piping;

G. For new and replacement tanks, the name of the installer, the expected date of installation, the nature of any emergency pursuant to subsection 1, paragraph A, if applicable, and a description or plan showing the layout of the facility or tank, including, for tanks in sensitive geologic areas, the form of secondary containment, monitoring wells or equipment to be installed pursuant to section 564, subsection 1, paragraph C; and

H. For existing facilities and tanks, the best estimate of the age and type of tank or tanks at the facility.

For existing tanks, the information required for registration shall be submitted to the department in accordance with this subsection on or before February 1, 1986.

3. Amended registration required. The owner or operator of an underground oil storage tank shall file an amended registration form with the department immediately upon any change in the information required pursuant to subsection 2. No fee may be charge for filing an amended registration.

4. Registration fees. The owner or operator of an underground oil storage facility used in the marketing and distribution of oil shall pay an annual fee to the department of \$25 for each tank with a capacity less than or equal to 6,000 gallons and \$50 for each tank with a capacity in excess of 6,000 gallons located at the facility. The initial fee payment shall accompany the initial registration form. Annual payments thereafter shall be paid on or before January 1st of each calendar year.

5. Payment for failure to register or to pay annual registration fee. Any person liable for the fee imposed by subsection 4 shall pay a \$10 late payment fee in addition to the fee specified in subsection 4, if the initial fee payment and registration form has not been submitted to the department on or before February 1, 1986, but is submitted on or before May 1, 1986.

Any person liable for the fee imposed by subsection 4 shall pay 3 times the fee specified in subsection 4

if the appropriate fee payment and registration form has not been submitted to the department on or before May 1, 1986.

The owner or operator of an underground oil storage tank not used in the marketing and distribution of oil shall pay a fee of \$50 for each tank that is not registered by May 1, 1986.

§564. Regulation of underground oil storage facilities used in the marketing and distribution of oil

The board shall adopt rules necessary to minimize, to the extent practicable, the potential for discharges of oil from underground oil storage facilities and tanks used in the marketing and distribution of oil to others. These rules are limited to the following requirements.

1. Design and installation standards for new and replacement tanks. Design and installation standards for new and replacement tanks are as follows.

A. All new and replacement tanks shall be constructed of fiberglass or cathodically protected steel.

B. All new and replacement tanks shall be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 105, and shall be registered with the department prior to installation pursuant to section 563.

C. For new and replacement tanks in sensitive geologic areas, the owner shall install one of the following:

(1) Secondary containment of all underground oil storage facility components;

(2) Continuous electronic monitoring for free product in those monitoring wells installed in the excavated area around the tank or tanks, and additional wells with electronic monitoring to detect a leak or discharge of oil from the piping;

(3) Continuous electronic monitoring in the unsaturated zone of all elements of the facility, using sufficient sampling points to detect a leak or discharge of oil from any point in the facility; or

(4) A reasonable number of monitoring wells located, sampled and tested that are sufficient to detect any discharge of oil or contamination of ground water.

D. The requirements set forth in paragraph B for new and replacement tanks in sensitive geologic areas may not be imposed solely due to the proximity of an underground oil storage tank to a private drinking water supply where the tank and private drinking water supply are located at the same site and are owned, operated or utilized by the same person or persons. In addition, the board shall adopt rules to provide for exemptions from the requirements of paragraph C in circumstances where the tank is to be installed over a polluted aquifer where no unreasonable additional harm to public health and safety or to the environment can occur.

2. Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks. The board's rules may require:

A. Collection of inventory data for each day that oil is being added to or withdrawn from the facility or tank, reconciliation of the data, with monthly summaries, and retention of records containing all such data for a period of at least 3 years either at the facility or at the facility owner's place of business;

B. Annual statistical inventory analysis, the results of which shall be reported to the department;

C. Annual voltage readings for cathodically protected systems;

D. Monthly inspections of the rectifier meter on impressed current systems;

E. Precision testing of any tanks and hydrostatic testing of all piping showing evidence of a possible leak. Results of all tests conducted shall be submitted to the department by the facility owner and the person who conducted the test;

F. Evidence of financial responsibility for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by sudden and nonsudden accidental discharges from an underground oil storage facility or tank; and

G. Reporting to the department any of the following indications of a possible leak or discharge of oil:

(1) Unexplained differences in daily inventory reconciliation values which, over a 30-day period, exceed .5% of the product delivered;

(2) Unexplained losses detected through statistical analysis of inventory records;

(3) Detection of product in a monitoring well; and

(4) Failure of a tank precision test or hydrostatic pipe test.

3. Replacement of tanks at facilities where leaks have been detected. If replacement is required as a result of a corrosion induced leak in an unprotected steel tank, the owner or operator of the facility may either replace all other tanks and piping at that facility not meeting the design and installation standards promulgated pursuant to subsection 1 or comply with the following:

A. Remove all bare steel and asphalt-coated steel tanks at the facility that are more than 20 years old;

B. Perform a statistical inventory analysis of the entire facility and submit the results of that analysis to the department. If a statistical inventory analysis of the entire facility had been performed within 60 days prior to the required replacement, then the results of that analysis may be submitted to the department instead. If the results of the statistical inventory analysis indicate evidence of a leak at the facility or that the data is not sufficiently reliable to make a determination that the facility is or is not leaking, the department may require that all remaining tanks and piping at the facility be precision tested, except that precision testing shall not be required where it can be demonstrated that the same tanks and piping passed a precision test conducted within the previous 6 months; and

C. Install a minimum of 2 ground water monitoring wells, as deemed necessary by the department to monitor the facility, unless all remaining tanks and piping at the facility were installed

in accordance with the standards promulgated pursuant to subsection 1.

Results of all precision tests conducted pursuant to paragraph B shall be submitted to the department, and all tanks and piping found to be leaking shall be removed pursuant to section 566, or repaired to the satisfaction of the department.

4. Sampling of monitoring wells. Where a monitoring well is installed at an underground oil storage facility used for the marketing and distribution of oil, the owner or operator shall be required to sample that well at least every 6 months; to maintain records of all sampling results at the facility or at the facility owner's place of business; and to report to the department any sampling results showing evident of a possible leak or discharge of oil.

§565. Regulation of underground oil storage facilities used for consumption on the premises or by the owner or operator

The board shall adopt rules necessary to minimize, to the extent practicable, the potential for discharges of oil from underground oil storage facilities not used in the marketing and distribution of oil to others. These rules shall apply to all underground oil storage tanks that are used for consumption on the premises or by the owner or operator of the facility, including tanks installed temporarily at a construction site; all residential home heating oil tanks regardless of size; all tanks owned or operated by the State, any of its agencies and instrumentalities or any political subdivision; and all other tanks and facilities that are not governed by the requirements of section 564. These rules are limited to the following requirements.

1. Design and installation standards for new and replacement tanks. Design and installation standards for new and replacement tanks are as follows.

A. The installation of new or replacement tanks constructed of bare steel or asphalt-coated steel is prohibited.

B. All new and replacement tanks shall be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 105, and shall be registered with the department prior to installation pursuant to section 563.

C. The installation of monitoring wells shall be

required for new and replacement tanks with a capacity in excess of 1,100 gallons where physically or technically practicable.

2. Testing requirements and reporting of leaks for existing, new and replacement facilities and tanks. Testing requirements and reporting of leaks for existing, new and replacement facilities and tanks are as follows.

A. The owner or operator shall be required to report promptly upon discovery to the department any evidence of a leak or discharge of oil.

B. Existing underground oil storage tanks that are used for storing motor fuels for consumptive use shall be precision tested for leaks when they are 20 years old, except that the owner or operator may elect to install monitoring wells as an alternative to precision testing. If, after reasonable inquiry has been made, the age of a tank is unknown, it shall be presumed to be 15 years old as of May 1, 1986, for purposes of compliance with this requirement. All such tanks shall be retested every 5 years thereafter until abandoned. Results of the precision tests shall be submitted to the department and all tanks and piping found to be leaking shall be removed pursuant to section 566 or repaired to the department's satisfaction.

C. Where a monitoring well is installed at a facility governed by this section, the owner or operator of the facility shall be required to sample that well at least every 6 months; to maintain records of all sampling results at the facility or at the facility owner's place of business; and to report to the department any sampling results showing evidence of a possible leak or discharge of oil.

§566. Abandonment of underground oil storage facilities and tanks

All underground oil storage facilities and tanks that have been, or are intended to be, taken out of service for a period of more than 12 months shall be properly abandoned. Abandoned facilities and tanks shall be removed, except where removal is not physically possible or practicable because the tank or other component of the facility to be removed is:

1. Location. Located beneath a building or other permanent structure;

2. Size and type of construction. Of a size and type of construction that it cannot be removed;

3. Inaccessible. Otherwise inaccessible to heavy equipment necessary for removal; or

4. Position. Positioned in such a manner that removal would endanger the structural integrity of nearby tanks.

The board shall adopt rules allowing for the granting of a variance from the requirement of removal where abandonment by removal is not physically possible or practicable due to circumstances other than those listed in subsections 1 to 4.

Notice of an intent to abandon an underground oil storage facility or tank shall be provided to the department at least 10 days prior to abandonment.

The board shall adopt rules setting forth the proper procedures for abandonment of underground oil storage facilities and tanks, including acceptable methods of disposing of removed tanks and procedures for abandonment in place where removal of a tank or other component of a facility is deemed not physically possible or practicable.

§567. Certification of underground tank installers

No person may install an underground oil storage facility or tank after May 1, 1986, without first having been certified by the Board of Underground Oil Storage Tank Installers, pursuant to Title 32, chapter 105.

§568. Cleanup and removal of prohibited discharges

1. Removal. Any person discharging or suffering a discharge of oil, petroleum products or their by-products to ground water in the manner prohibited by section 543 shall immediately undertake to remove that discharge to the department's satisfaction. Notwithstanding this requirement, the department may undertake the removal of that discharge and may retain agents and contractors for those purposes who shall operate under the direction of the department. Any unexplained discharge of oil, petroleum products or their by-products to ground water within state jurisdiction shall be removed by or under the direction of the department. Any expenses involved in the removal of discharges, whether by the person causing the same, the person reporting the same or the department by itself or through its agents or contractors, may be paid in the first instance from the

Ground Water Oil Clean-up Fund and any reimbursements due that fund shall be collected in accordance with section 569.

2. Restoration of water supplies. The department may clean up any discharge of oil, including implementing remedies to restore or replace water supplies contaminated with oil, petroleum products or their by-products, using the most cost-effective alternative that is technologically feasible and reliable and which effectively mitigates or minimizes damage to and provides adequate protection of the public health, welfare and the environment. The department shall consult with the affected party prior to selecting the alternative to be implemented.

3. Issuance of clean-up orders. If the department finds, after investigation, that a discharge of oil has occurred and may create a threat to public health or the environment, including, but not limited to, contamination of a water supply, the commissioner may order the responsible party who has caused or suffered the discharge to cease the discharge immediately or to take action to prevent further discharge and to mitigate or terminate the threat. He may also order that the responsible party take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including a requirement that responsible party restore or replace water supplies contaminated with oil, petroleum products or their by-products using the most cost-effective alternative that is technologically feasible and reliable and which effectively mitigates or minimizes damage to, and provides adequate protection of, the public health, welfare and the environment. Clean-up orders shall only be issued in compliance with the following requirements.

A. Any orders issued under this section shall contain findings of fact describing the manner and extent of oil contamination, the site of the discharge and the threat to the public health or environment.

B. A responsible party to whom such an order is directed may apply to the board for a hearing on the order. The hearing shall be held by the board within 15 days after receipt of the application. Within 7 days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

4. Enforcement; penalties. Any person who causes, or is responsible for, a discharge to ground water in violation of section 543 shall not be subject to any fines or civil penalties for the discharge if that person promptly reports and removes that discharge in accordance with the rules and orders of the department and the board.

§569. Ground Water Oil Clean-up Fund

The Ground Water Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. To this fund shall be credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements and other fees and charges related to this subchapter. To this fund shall be charged any and all expenses of the department related to this subchapter, including administrative expenses, payment of 3rd party damages covered by this subchapter, costs of removal of discharges of oil and costs of cleanup of discharges, including, but not limited to, restoration of water supplies.

The Board of Environmental Protection may authorize the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund to carry out the provisions of subchapters II-A and II-B. All funds borrowed pursuant to this section shall be repaid with interest to the fund of origin in as prompt a manner as revenues allow. The rate of interest shall be determined by the Treasurer of State, based on the average rate of interest earned on funds invested during the period of the loan.

Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund, shall be deposited with the Treasurer of State to the credit of the fund and may be invested in such a manner as is provided for by law. Interest received on that investment shall be credited to the Ground Water Oil Clean-up Fund.

1. Research and development. The Legislature may allocate not more than \$100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on ground waters of the State. These allocations shall be made in accordance with section 570-A.

2. Third party damages. Any person claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, hereinafter called the claimant, may apply within 6 months after the occurrence of the discharge to the board stating the amount of damage alleged to be suffered as a result of that discharge. The board shall prescribe appropriate forms and details for the applications. The board may, upon petition and for good cause shown, waive the 6 months' limitation for filing damage claims.

A. If the claimant, the board and the responsible party are able to agree as to the amount of the damage claim, or in the case where the board has exercised reasonable efforts but has been unable to identify the responsible party, if the claimant and the board are able to agree as to the amount of the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Ground Water Oil Clean-up Fund.

B. If the claimant, the board and the responsible party are not able to agree as to the amount of the damage claim, or in the case where the board has exercised reasonable efforts but has been unable to identify the responsible party, if the claimant and the board are not able to agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

C. Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

D. Damage claims arising under this subchapter are recoverable only in the manner provided under this subchapter; it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

E. Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of the federal courts against the person causing or otherwise responsible for the discharge.

3. Board of Arbitration. The Board of Arbitra-

tion shall consist of 3 persons, one to be chosen by the person determined in the first instance by the board to be the responsible party, one to be chosen by the board to represent the public interest and one person chosen by the first 2 appointed members to serve as a neutral arbitrator. The determination by the board of a responsible party is not an appealable order. The neutral arbitrator shall serve as chairman. If the 2 arbitrators fail to agree upon, select and name the neutral arbitrator within 10 days after their appointment, then the board shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

A. No member of the board may serve as an arbitrator.

B. The person determined by the board to be the responsible party shall appoint an arbitrator within such period of time as the board may by rule prescribe. In the event that the responsible party shall fail to select its arbitrator within 10 days after receipt of notice from the board that such selection is necessary, the board shall request the American Arbitration Association to select an arbitrator to represent the interest of that party in the arbitration proceedings.

In the case where a responsible party has not been identified, the board shall request the American Board of Arbitration to appoint an arbitrator to represent the interest of the unknown party.

C. One Board of Arbitrators shall be established for and hear and determine all claims arising from or related to a common single discharge.

D. Hearings before Boards of Arbitrators shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. The Board of Arbitration may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to them for determination.

E. Determinations made by a majority of the Board of Arbitration shall be final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters relating to abuse of discretion by the Board of Arbitration. A party seeking review of a Board of Arbitration determination must file an

appeal in the Superior Court within 30 days of the Board of Arbitration determination.

F. Representation on the Board of Arbitration shall not be deemed an admission of liability for the discharge.

G. If the final determination of the Board of Arbitration includes a damage award, the Board of Arbitration shall certify the amount of the damage award and the name of the claimant to receive the award to the Treasurer of State. The Treasurer of State shall pay that amount to the claimant from the Ground Water Oil Clean-up Fund no sooner than 35 days after the date of the final determination of the Board of Arbitration. If the determination of the Board of Arbitration is appealed pursuant to paragraph E, the Treasurer of State shall withhold payment of the damage award until a final judgment on the appeal is entered, at which time the Treasurer of State shall pay any damage awards according to the terms of the final judicial judgment, with interest at the commercial rate as established by the Treasurer of State calculated from the date of the Board of Arbitration's final determination.

4. Funding. A fee of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products other than gasoline, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, shall be assessed on the transfer of those products by oil terminal facility licensees. These fees shall be paid monthly by the oil terminal facility licensee on the basis of records certified to the department. All such transfer fees shall be credited to the Ground Water Oil Clean-up Fund upon receipt by the department.

5. Disbursements from fund. Money in the Ground Water Oil Clean-up Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the department related to the enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section;

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products to ground water covered by this subchapter;

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

D. Payment of the 3rd party damage claims awarded in accordance with this section;

E. Payment of costs of arbitration and arbitrators;

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

G. Sums up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 which may have adverse economic effects and which occur subsequent to the allocation, when the studies are deemed necessary by the commissioner.

6. Reimbursements to the Ground Water Oil Clean-up Fund. The department shall seek recovery to the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G in connection with a prohibited discharge, unless the department finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection.

7. Waiver of reimbursement. Upon petition of any responsible party, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

A. An act of war;

B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 568; or

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

Upon such a finding by the board, immediate credit therefor shall be entered for the party involved. The findings of the board shall be conclusive, as it is the legislative intent that the waiver provided in

this subsection is a privilege conferred not a right granted.

§570. Liability

Because it is the intent of this subchapter to provide the means for rapid and effective clean up and to minimize direct damages as well as indirect damages and the proliferation of 3rd-party claims, each responsible party who permits or suffers a prohibited discharge of oil is jointly and severally liable to the State for all disbursements made by it pursuant to section 569, subsection 5, paragraphs B, D and E, or other damage incurred by the State.

In any suit filed under this subchapter, to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the responsible party causing or otherwise responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge and that the discharge occurred at a facility under the control of the responsible party causing the discharge or was otherwise attributable to a responsible party as provided in this subchapter.

§570-A. Budget approval

The department shall submit its budget recommendations for disbursements from the fund in accordance with section 569, subsection 5, paragraphs A, C, F and G for each biennium. The budget shall be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures therefrom as approved by the commissioner. Expenditures pursuant to section 569, subsections 5, paragraphs B, D and E may be made as authorized by the State Controller following approval by the commissioner.

§570-B. Personnel and Equipment

The department shall establish and maintain at such locations as it shall determine to be appropriate, such employees and equipment as in its judgment may be necessary to carry out this subchapter. The commissioner, subject to the Personnel Law, may employ such personnel as may be necessary to carry out the purposes of this subchapter and shall prescribe the duties of those employees. The salaries of those employees and the cost of that equipment shall be paid from the Ground Water Oil Clean-up Fund established by this subchapter.

§570-C. Municipal ordinances; powers limited

Nothing in this subchapter may be construed to deny any municipality, by ordinance or by law, from exercising police powers under any general or special act, provided that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety shall be valid unless in direct conflict with this subchapter or any rule or order of the board adopted under authority of this subchapter.

§570-D. Transition

Damage claims filed with the department on or before the effective date of this Act which, after the enactment of this subchapter, would be controlled by the provisions of this subchapter may proceed either in the manner set forth herein or in the manner set forth in subchapter II-A, at the choice of the claimant. Reimbursement for any expenditures shall be credited to the fund from which the expenditures were made.

§570-E. Legislative review

Rules adopted by the board under this subchapter shall be submitted for review by the joint standing committee of the Legislature having jurisdiction over energy and natural resources and, until December 1, 1987, to the joint standing committee of the Legislature having jurisdiction over audit and program review. In reviewing the rules promulgated by the board under this subchapter, these legislative committees shall be guided by the provisions of Title 5, chapter 377-A.

§570-F. Special provisions

Nothing in this subchapter shall be construed to authorize the Board of Environmental Protection to require registration of or to regulate the installation or operation of underground tanks used for the storage of propane.

The board shall adopt rules for underground oil storage tanks for storing waste oil. These rules shall not be limited by the provisions of subchapter II-B.

Sec. 15. Borrowing from the Maine Coastal and Inland Surface Oil Clean-up Fund. To provide for the start-up of the Ground Water Oil Clean-up Fund, subject to the approval of the commissioner, the department may borrow up to \$1,200,000 from the Maine Coastal and Inland Surface Oil Clean-up Fund during

fiscal year 1985-86 to be expended for the purposes set forth in the Maine Revised Statutes, Title 38, chapter 3, subchapter II-B. Any money borrowed shall be repaid with interest to the Maine Coastal and Inland Surface Oil Clean-up Fund before June 30, 1987, with the exception of \$250,000 in fiscal year 1986 and \$250,000 in fiscal year 1987 to be borrowed without repayment. The rate of interest shall be determined by the Treasurer of State, based on the average rate of interest earned on funds invested during the period of the loan.

Sec. 16. Board study. The Board of Underground Oil Storage Tank Installers established by the Maine Revised Statutes, Title 32, chapter 105, may review the need to establish a 2-tiered master-journeyman professional classification system. If the board determines the need for such a professional classification system, then it shall submit its report to the joint standing committee having jurisdiction over audit and program review.

PART B

Adjustments to special revenues. In order to provide for necessary adjustments of special revenue accounts to implement the recommendations of the joint standing committee having jurisdiction over audit and program review, allocations are adjusted by the amounts designated in the following tabulations.

	<u>1985-86</u>
<u>ATTORNEY GENERAL, DEPARTMENT OF</u>	
Legal Assistance to	
Other Agencies	
Legislative Position Count	(1.0)
Personal Services	\$24,400
All Other	<u>2,200</u>
Subtotal	\$26,600

Provides for the availability of funds to be used for the funding of an assistant attorney general position for the purpose of increasing recovery of state expenditures on the clean-up and restoration of ground water and well water. Funds will be transferred from the Ground Water Oil Clean-up Fund to pay for the ser-

1985-86

vices of an assistant attorney general position.

ENVIRONMENTAL PROTECTION,
DEPARTMENT OF

Maine Coastal and Inland Surface Oil Clean-up Fund	
Legislative Position Count	(11.0)
Personal Services	\$318,832
All Other	493,168
Capital Expenditures	<u>95,000</u>
Subtotal	\$907,000

Provides for allocations for the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out the provisions of the Maine Revised Statutes, Title 38, chapter 3, subchapter II-A, which includes the clean-up and restoration of oil contaminated coastal and inland surface water.

Ground Water Oil Clean-up Fund

Legislative Position Count	(13.0)
Personal Services	\$323,891
All Other	734,297
Capital Expenditures	<u>59,500</u>
Subtotal	\$1,117,688

Provides for allocations from the Ground Water Oil Clean-up Fund to carry out the provisions of the Maine Revised Statutes, Title 38, chapter 3, subchapter II-B, which include the clean-up and restoration of oil contaminated ground water and well water. Also provides the authority for the Department of Environmental Protection to transfer funds for the purpose of supporting an assistant attorney general position

1985-86

to increase the recovery
of state expenditures.

TOTAL PART B

\$2,051,288

PART C

Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1985-86TRANSPORTATION, DEPARTMENT OF

Highway Maintenance - Summer	
Personal Services	\$10,000
All Other	70,000
Capital Expenditures	1,500
Total	<u>\$81,500</u>

Provides funds for 6-month clerical position and contract surveys in order to comply with underground storage tank registration. All funds not expended by the Department of Transportation for this purpose shall not be spent for any other purpose and shall lapse back to the Highway Fund. The Department of Transportation shall provide a report of its expenditures to the Joint Standing Committees on Audit and Program Review and Transportation.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 28, 1985.