LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST REGULAR SESSION

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PUBLIC LAWS

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No debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published and mailed. Prior to the expiration of the period, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of debt so authorized.

Sec. 13. 35-A MRSA §6307, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§6307. Legislative amendment of charter

~~Each year, on or before April 15th, the joint standing committee of the Legislature having jurisdiction over public utilities shall report out legislation entitled "AN ACT to Amend the Charters of Various Water Districts Organized under the Private and Special Laws." Amendments to water district charters shall generally be included in that Act.~~ Prior to acting upon any proposed water district charter amendment, the joint standing committee of the Legislature having jurisdiction over public utilities shall obtain written comments from the municipalities that lie in whole or in part within the district.

Sec. 14. 35-A MRSA c. 69, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 15. 35-A MRSA §7102, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Emergency. "Emergency" means a situation in which property or human or animal life is in jeopardy and the prompt summoning of aid is essential.

Sec. 16. 35-A MRSA §8101, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

2. Penalty for falsifying contents of dispatch. An operator or agent who intentionally falsifies a dispatch ~~commits a civil violation for which a forfeiture of not less than $20 nor more than $100 may be adjudged. In case of his avoidance or inability to pay the judgment, his employer must pay the sum~~ is guilty of falsifying a dispatch. Falsifying a dispatch is a Class E crime.

Sec. 17. 38 MRSA §1253, sub-§3, as enacted by PL 1981, c. 466, §13, is amended to read:

3. Legislative amendment of charters. ~~Each year, on or before April 15th, the legislative committee having jurisdiction over public utilities shall report out legislation entitled "AN ACT to Amend the Charters of Various Sewer Districts Organized Under the Private and Special Laws." Amendments to sewer district charters shall generally be included in that Act.~~ Prior to acting upon any proposed sewer district charter amendment the legislative committee shall obtain written comments from the municipalities that lie in whole or in part within the district.

Effective September 29, 1987.

CHAPTER 491

H.P. 618 — L.D. 836

AN ACT to Provide Comprehensive Protection for Ground Water.

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

Sec. 1. 23 MRSA §3659 is enacted to read:

§3659. Protection of private water supplies

In the event a land owner believes that a private water supply on his land has been destroyed or rendered unfit for human consumption by a political subdivision constructing, reconstructing or maintaining a public highway under its jurisdiction, the owner may apply in writing to the political subdivision for a determination of the alleged cause and assessment of damages.

1. Application presented within 2 years. If the claim is founded on construction or reconstruction, the owner shall present the application within 2 years after completion of the work as that date appears in the records of the political subdivision. The application shall set forth:

A. The name and address of the owner;

B. The name and address of any lien holder;

C. The owner's source of title;

D. The location of the property;

E. A description of the damage; and

F. The cause to which the damage is attributed.

2. Written response. Within 90 days upon receipt of the owner's application, the political subdivision shall forward a written response to the owner.

3. Offer of settlement. If the political subdivision determines that any damage to the privately owned water supply was caused by the political subdivision constructing, reconstructing or maintaining the public highway, the political subdivision shall set forth in its response an offer of settlement. The political subdivision in its response shall consider the necessity for the installation or replacement of piping, tanks, pumps, heating systems or other related fixtures. In its offer of settlement, a political subdivision may consider the following remedies:

A. Replacing the water supply;

B. Repairing the damage to the water supply;

C. Paying a designated sum of money; and

D. Purchasing the realty served by the water supply.

4. Action filed. If the landowner and political subdivision are unable to agree on the cause of the problem to the water supply or to the terms of settlement, the landowner may file an action in Superior Court in the county or counties where the land is located.

A. The complaint shall be filed within one year after receiving a written response by the municipality.

B. The case shall be determined by a referee and the court shall appoint one or more referees pursuant to the Maine Rules of Civil Procedure.

C. Damages to the property shall be based on the difference between the fair market value of the property before the water supply was destroyed or rendered unfit and the fair market value of the property after the water supply was destroyed or rendered unfit or based on the cost to cure the damage, whichever amount is less.

5. Limitations on liability. A political subdivision shall not be liable:

A. If the private water supply is located within the right-of-way limits of the highway;

B. If the location of the private water supply does not provide for adequate surface drainage, provided that surface drainage problems caused by the construction, reconstruction or maintenance of a public highway by the political subdivision do not relieve the political subdivision of liability under this section; or

C. If the private water supply prior to the construction, reconstruction or maintenance was contaminated or polluted by another source to the degree that the contamination or pollution rendered it unfit for human consumption.

Sec. 2. 32 MRSA §10002, sub-§7, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

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

Sec. 3. 38 MRSA §349, sub-§3, as amended by PL 1985, c. 746, §12, is further amended to read:

3. Falsification and tampering. Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any rule, regulation, license, permit, approval or decision of the board or commissioner, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the board or who fails to comply with any information submittal required by the commissioner pursuant to section 568, subsection 3, or section 1364, subsection 3, shall, upon conviction, be subject to a fine of not more than $10,000, or by imprisonment for not more than 6 months, or both.

Sec. 4. 38 MRSA §404 is enacted to read:

§404. Ground water rights

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Beneficial domestic use" means any ground water used for household purposes essential to health and safety, whether provided by individual wells or through public supply systems.

B. "Ground water" means all the waters found beneath the surface of the earth.

C. "Preexisting use" means any use which was undertaken by a public water supplier, a landowner or lawful land occupant or a predecessor in interest of either of them, at any time during the period of 3 years prior to the commencement of the use which resulted in the interference.

2. Cause of action created. Subject to the limitations of subsection 3 and except as provided by Title 23, section 652, a person is liable for the withdrawal of ground water, including use of ground water in heat pump systems, when the withdrawal is in excess of beneficial domestic use for a single-family home and when the withdrawal causes interference with the preexisting beneficial domestic use of ground water by a landowner or lawful land occupant.

3. Limitations. The liability imposed under subsection 2 shall be in compensatory damages only, to be recovered in an action brought by the landowner or other lawful land occupant whose ground water use has been interfered with, against the person whose subsequent use has caused the interference.

A. The damages shall be limited to the following:

(1) All costs necessary to restore the landowner or lawful land occupant to a status which is reasonably equivalent in terms of quantity and quality of ground water, made available on a similarly accessible and economic basis;

(2) Compensatory damages for loss or damage to property, including, without limitation, the loss of habitability of residence, caused to the landowner or lawful land occupant by reason of the interference,

prior to restoration of the status provided for in subparagraph (1); and

(3) Reasonable costs, including expert witness and attorney fees, incurred in initiating and prosecuting an action when necessary to secure a judgment granting the relief provided for under this chapter.

B. The rights afforded by this chapter shall be in addition to, and not in derogation of, any other rights, whether arising under statute or common law, which any person may have to seek redress against any other person for ground water interference or contamination.

Sec. 5. 38 MRSA §562, sub-§10, ¶C, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

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

Sec. 6. 38 MRSA §563, sub-§1, ¶A, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

A. No person may install, or cause to be installed, a new or replacement underground oil storage ~~tank~~ facility without first having registered the ~~tank~~ facility 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~~ facility 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~~ will be located.

The owner or operator shall make available a copy of the facility's registration at that facility for inspection by the department and authorized municipal officials.

Sec. 7. 38 MRSA §563, sub-§2, ¶G, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

G. For new ~~and~~, replacement or retrofitted tanks, the name of the installer, the expected date of installation or retrofit, 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, where applicable, the method of retrofitting; and

Sec. 8. 38 MRSA §563, sub-§5, as amended by PL 1985, c. 626, §2, is repealed and the following enacted in its place:

5. Payment for failure to register or to pay annual registration fee. Any person liable for the fee imposed by subsection 4 shall pay 3 times the fee specified in subsection 4 if the initial fee payment and registration form has not been submitted to the department on or before May 1, 1986, or if the annual registration fee has not been submitted on or before January 1st of each calendar year. This does not preclude the department from seeking civil penalties from any person who fails to register a facility or tank. The owner or operator of an underground oil storage facility 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, except that the board may establish, by rule, an annual late registration period not to exceed 10 business days in duration during which time no registration fee may be assessed.

Sec. 9. 38 MRSA §563, sub-§6 is enacted to read:

6. Providing notice. Prior to the sale or transfer of any real estate where an underground oil storage facility is located, the owner of the real estate shall file a written notice with the purchaser or transferee. The notice shall disclose the existence of the underground oil storage facility, its registration number or numbers, the real estate where the facility is located, whether or not the facility has been abandoned in place pursuant to section 566-A and that the facility is subject to regulation, including registration requirements, by the department under this subchapter.

Sec. 10. 38 MRSA §§563-A and 563-B are enacted to read:

§563-A. Prohibition of nonconforming underground oil storage facilities and tanks

1. Compliance schedule. No person may operate, maintain or store oil in a registered underground oil storage facility or tank which is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department after:

A. October 1, 1989, if that facility or tank is more than 15 years old and is located in a sensitive geological area;

B. October 1, 1991, if that facility or tank is more than 25 years old or if that facility or tank is more than 15 years old and is located in a sensitive geological area;

C. October 1, 1994, if that facility or tank is more than 20 years old or if that facility or tank is more than 15 years old and is located in a sensitive geological area; and

D. October 1, 1997.

2. Consideration of sensitive geological areas. For the

purposes of this section, an underground oil storage facility is not subject to subsection 1, paragraph A, regarding sensitive geological areas if the board finds that:

A. The applicant has demonstrated that:

(1) The facility is located in a municipality with a population of more than 10,000;

(2) All persons within 500 feet of the facility are served by a public drinking water supply;

(3) The facility is not located within 2,000 feet of any source of supply of a public drinking water supply system; and

(4) The facility is not located within 300 feet of any source of supply of a private drinking water supply system.

3. Violations. After reasonable notice and hearing, if the board finds that an owner of an underground oil storage facility has failed to correct any violations of this subchapter, the board may impose on the owner a schedule that provides for the early application of any or all of the prohibitions contained in subsection 1.

4. Presumption of age. If the age of the underground oil storage facility or tank cannot be determined, it shall be presumed to be 20 years old as of October 1, 1989.

5. Abandonment. All underground oil storage facilities subject to the prohibitions in this section and section 563, subsection 1, shall be properly abandoned in accordance with section 566-A prior to the applicable prohibition dates.

6. Rules. The board may adopt rules necessary to administer this section.

7. Report to Legislature. The department shall report to the joint standing committee of the Legislature having jurisdiction over natural resources on or before January 1, 1989, on the progress made toward achieving the compliance schedule established by this section.

§563-B. Regulatory powers of department

In addition to the rule-making authorities otherwise set forth in this subchapter, the board may adopt rules related to the following matters:

1. Removal. Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants;

2. Inventory analyses; precision testing; leak detection methods. Procedures and methods to be used in conducting statistical inventory analyses, underground oil storage facility precision testing and other leak detection methods;

3. Hearings. Hearings related to clean-up orders issued pursuant to section 568; and

4. Third-party damage claims. Procedures to be used in filing and processing of 3rd-party damage claims.

Sec. 11. 38 MRSA §564, sub-§2, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

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.

The requirements in paragraphs A and B do not apply to a double-walled tank containing interstitial space monitoring which has been installed and is operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter, and utilizing double-walled piping or a product delivery system

using a suction pump or other system approved by the department which has been installed and is operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter.

Sec. 12. 38 MRSA §565, sub-§2, ¶B, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

B. ~~Existing underground~~ Underground oil storage tanks that are used for storing motor fuels for consumptive use shall be precision tested for leaks every 5 years until abandonment when they are ~~20~~ 15 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 promptly to the department and all tanks and piping found to be leaking shall be removed pursuant to section ~~566~~ 566-A or repaired to the department's satisfaction.

Sec. 13. 38 MRSA §566, as amended by PL 1985, c. 626, §7, is repealed.

Sec. 14. 38 MRSA §566-A is enacted to read:

§566-A. Abandonment of underground oil storage facilities and tanks

1. Abandonment. 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 by the owner or operator of the facility or tank or, if the owner or operator is unknown, by the current owner of the property where the facility or tank is located. All 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:

A. Located beneath a building or other permanent structure;

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

C. Otherwise inaccessible to heavy equipment necessary for removal; or

D. Positioned in such a manner that removal will endanger the structural integrity of nearby tanks.

2. Notice of intent. The owner or operator of an underground oil storage facility or tank or, if the owner or operator is unknown, the current owner of the property where the facility or tank is located shall provide written notice of an intent to abandon an underground oil storage facility or tank to the department and the fire department in whose jurisdiction the underground oil facility or tank is located at least 10 days prior to abandonment.

3. Rulemaking. 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 this subsection. 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 the 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.

4. Departmental role. If the owner of an underground oil storage facility or tank fails to properly abandon the facility or tank within a reasonable time period, the department may undertake the abandonment. The department shall collect any reimbursement due the Ground Water Oil Clean-up Fund in accordance with section 569.

5. Qualified personnel. All abandoned facilities and tanks used for the storage of Class 1 liquids that require removal shall be removed under the direction of an underground oil storage tank installer certified pursuant to Title 32, chapter 104-A, or of professional firefighting personnel. The certified installer need not be present at the site at the time of the tank's or facility's removal.

Sec. 15. 38 MRSA §568, as enacted by PL 1985, c. 496, Pt. A, §14, is repealed and the following enacted in its place:

§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 commission may order the removal of that discharge pursuant to subsection 3, or the department may undertake the removal of that discharge and retain agents and contractors for that purpose 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 and take temporary and permanent remedial actions at locations threatened

or affected by the discharge of oil, including restoring or replacing water supplies contaminated or threatened by 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. When the remedial action taken includes the installation of a public water supply, the fund may be used to pay costs of operation and maintenance of the water supply for a period not exceeding 5 years. The department shall consult with the affected party prior to selecting the alternative to be implemented.

3. Issuance of clean-up orders. The department may investigate and sample sites where an oil discharge has or may have occurred to identify the source and extent of the discharge. During the course of the investigation, the commissioner may require submission of information or documents, which relate or may relate to the discharge under investigation, from any person who the department has reason to believe may be a responsible party. 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 to cease the discharge immediately or to take action to prevent further discharge and to mitigate or terminate the threat. The commissioner may 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 the 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 if the application is made within 10 working days after receipt of the order by a responsible party. The hearing shall be held by the board within 15 working days after receipt of the application. The nature of the hearing before the board shall be an appeal. At the hearing, all witnesses shall be sworn and the department shall first establish the basis for the order and for naming the person to whom the order was directed. The burden of going forward shall then shift to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. 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.

5. Acquisition of property; authority. The department may acquire, by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property that the board in its discretion determines, by 2/3 majority vote, is necessary to conduct a remedial action under this subchapter. There shall be no cause of action to compel the board to acquire any interest in real property under this subchapter.

A. The board may use the authority in this subsection for a remedial action only if, before an interest in real estate is acquired under this subsection, the municipality in which the interest to be acquired is located assures the board through a contract or other legal agreement that the municipality will accept transfer of the interest following completion of the remedial action.

Sec. 16. 38 MRSA §569, sub-§2, as enacted by PL 1985, c. 496, Pt. A, §14, is repealed.

Sec. 17. 38 MRSA §569, sub-§2-A is enacted to read:

2-A. Third-party damages. Any person claiming to have suffered actual 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, in this subsection called the claimant, may apply within 6 months after the occurrence or discovery 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, upon petition and for good cause shown, may waive the 6-month limitation for filing damage claims.

A. 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 amount of the claim from the Ground Water Oil Clean-up Fund.

B. If the claimant and the board are not able to agree as to the amount of the damage claim, the board shall forthwith transmit the claim for action to the department as provided in this subchapter.

C. A claimant shall take all reasonable measures to minimize damages suffered by the claimant as a result

of a discharge of oil.

D. 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.

E. Damage claims arising under this subchapter are recoverable only in the manner provided under this subchapter. It is the intent of the Legislature that the remedies provided for such damage claims in this subchapter are exclusive.

F. 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 a court of competent jurisdiction against the person causing or otherwise responsible for the discharge.

Sec. 18. 38 MRSA §569, sub-§3, as enacted by PL 1985, c. 496, Pt. A, §14, is repealed.

Sec. 19. 38 MRSA §569, sub-§3-A is enacted to read:

3. Determination of disputed 3rd-party damage claims. The commissioner shall establish a claims processing capability within the department to hear and determine claims filed under this subchapter which are not agreed upon by the claimant and the board.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims.

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

C. Hearings before the hearing examiner shall be informal and the rules of evidence prevailing on judicial proceedings shall not be binding. The hearing examiner 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 him for determination.

D. Determinations made by the hearing examiner 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 hearing examiner. A claimant seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination.

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner, and shall certify the name of the claimant to the Treasurer of State, unless the commissioner has determined that the claimant is a responsible party, in which case certification shall be withheld until all claims that the department has against the responsible party with respect to the discharge have been satisfied.

Sec. 20. 38 MRSA §569, sub-§4, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

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 and liquid asphalt, 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, as defined in section 542, subsection 7. These fees shall be paid monthly by the oil terminal facility ~~licensee~~ licensees 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.

Sec. 21. 38 MRSA §569, sub-§6, as amended by PL 1985, c. 746, §24, is further amended to read:

6. Reimbursements to the Ground Water Oil Clean-up Fund. The department shall seek recovery for 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, or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, 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.

Sec. 22. 38 MRSA §570, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

§570. Liability

Because it is the intent of this subchapter to provide the means for rapid and effective ~~clean up~~ cleanup and to minimize direct damages as well as indirect damages and the proliferation of 3rd-party claims, each responsible party who permits or suffers, or is connected with, 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 and G, or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure.

In any ~~suit filed~~ administrative or judicial action taken 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.

Sec. 23. 38 MRSA §570-F, first ¶, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

Nothing ~~is~~ 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.

Sec. 24. 38 MRSA §570-G is enacted to read:

§570-G. Construction

This subchapter is necessary for the general welfare, public health and public safety of the State and its inhabitants and shall be liberally construed to effect the purposes set forth under this subchapter. No rule or order of the board may be stayed pending appeal under this subchapter.

Sec. 25. 38 MRSA §1319-I, sub-§§1, 2, 3, 4 and 8, as amended, are repealed and the following enacted in their place:

1. Fees for actions taken on the site of generation. Any person in the State who generates more than 1,000 kilograms of hazardous waste in any calendar month shall pay a fee as follows:

A. For hazardous waste which is disposed of on the site of generation in a licensed hazardous waste disposal facility, 2.0¢ a pound; and

B. For hazardous waste which is stored on the site of generation in a licensed hazardous waste storage facility for more than 90 days, but less than 6 calendar months, and for each time period thereafter or 6 calendar months or portion thereof, .5¢ a pound.

2. Fees for action taken off site of generation. Any person who transports hazardous waste in the State shall pay a fee as follows:

A. For hazardous waste which is transported off the site to a licensed hazardous waste disposal facility for disposal, 2.0¢ a pound; and

B. For hazardous waste which is transported off the site to a licensed hazardous waste treatment facility for treatment, storage facility for storage or other licensed facility for handling, including beneficial reuse, reclamation or recycling, 1.5¢ a pound.

3. Fee for transportation into Maine from out of state. If hazardous waste or waste oil is transported into Maine from out of state, the person who first transports the hazardous waste or waste oil into Maine shall pay a fee equal to twice the amount indicated by the schedules outlined in subsection 2 for hazardous waste or subsection 5 for waste oil, as if that person were the waste oil dealer.

The commissioner may waive up to 50% of the fee imposed under this subsection if the state from which the hazardous waste or waste oil is transported to Maine observes the same reciprocity with regard to hazardous waste transported to that state from Maine.

4. Fee for failure to treat or dispose of hazardous waste within 90 days from arrival. Any person who owns or operates a hazardous waste treatment or disposal facility and who does not treat or dispose of the hazardous waste within 90 days from the date the hazardous waste arrives at the hazardous waste facility shall pay a fee according to the fee schedule in subsections 1 and 2.

8. Limit on fees. No person may be required to pay, for any calendar year, more than $15,000 in fees under subsection 1.

Sec. 26. Authorization for research. In accordance with the Maine Revised Statutes, Title 38, section 551, subsection 1, the Legislature authorizes a special study to be conducted pertaining to the environmental and public health threats from, and regulation of, above-ground facilities that store petroleum products and other hazardous materials.

Sec. 27. Authorization for program development. The Legislature authorizes the Department of Environmental Protection to develop a program plan to assist persons who generate up to 1,000 kilograms of hazardous waste in a calendar month, including household hazardous waste, in minimizing the generation of hazardous waste and developing economical methods of properly collecting, transporting and disposing of their hazardous waste.

The program plan shall be completed and submitted to the joint standing committee of the Legislature having jurisdiction over natural resources by January 1, 1989, and shall include:

1. Survey. A survey of businesses which utilize some form of hazardous waste recycling, chemical substitution or other waste minimization methods;

2. Assessment. An assessment of practical recycling or waste minimization methods that may be available to businesses;

3. Transportation. Methods by which persons generating up to 1,000 kilograms of hazardous waste a calendar month may reduce transportation costs for disposal through cooperative or cost-sharing practices;

4. Regional collection. The feasibility of establishing a regional collection or transfer facility networks statewide for persons generating up to 1,000 kilograms of hazardous waste per calendar month and persons generating household hazardous waste, with the facilities being owned, operated and serviced by the public sector or private industry; and

5. Directory. A directory of hazardous waste gener-

ators in the State compiled by geographic regions and Maine-licensed hazardous waste transporters who serve those regions.

Sec. 28. Allocation. The following funds are allocated from the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out the purposes of section 26 of this Act.

	1987-88	1988-89
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Coastal and Inland Surface Oil Clean-up Fund		
Positions	(1)	(1)
Personal Services	$29,642	$31,047
All Other	20,358	18,953
Capital Expenditures	1,000	1,000
Total	$51,000	$51,000

Sec. 29. Allocation. The following funds are allocated from the Hazardous Waste Fund to carry out the purposes of section 27 of this Act.

	1987-88	1988-89
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Hazardous Waste Fund		
Positions	(1)	(1)
Personal Services	$29,642	$31,047
All Other	20,358	18,953
Capital Expenditures	1,000	1,000
Total	$51,000	$51,000

Sec. 30. Authorization for carry-over. The Legislature authorizes the Department of Environmental Protection to carry over until June 30, 1988, funds appropriated for fiscal year 1985-86 from the General Fund pursuant to Public Law 1985, chapter 501, Part A, §1, to the Bureau of Water Quality Control for a technical assistance program to municipalities for assessing development impacts on local ground water resources.

Effective September 29, 1987.

CHAPTER 492

H.P. 1278 — L.D. 1749

AN ACT to Establish a Compliance Schedule for Owners and Operators of Salt Storage Areas.

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

38 MRSA §451-A, sub-§1-A is enacted to read:

1-A. Time schedule for salt and sand-salt storage program. An owner or operator of a salt or sand-salt storage area is not in violation of any ground water classification or reclassification adopted on or after January 1, 1980, at any time prior to October 1, 1996, with respect to discharges to the ground water from those facilities, if by that time the owner or operator has completed all steps then required to be completed by the schedules set forth in this subchapter. The department shall administer this schedule according to the project priority list adopted by the board pursuant to section 411 and the provisions of this subsection.

A. Preliminary plans and engineers' estimates shall be completed and submitted to the Department of Transportation by the following dates:

(1) For Priority 1 and 2 projects — January 1989;

(2) For Priority 3 project — January 1990;

(3) For Priority 4 project — January 1991; and

(4) For Priority 5 project — January 1992.

B. Arrangements for administration and financing shall be completed within 12 months of the dates established in paragraph A for each priority category.

C. Detailed engineering and final plan formulation shall be completed within 24 months of the dates established in paragraph A for each priority category.

D. Review of final plans with the Department of Transportation shall be completed and construction commenced within 36 months of the dates established in paragraph A for each priority category. The Department of Transportation shall consult with the department in reviewing final plans.

E. Construction shall be completed and in operation on or before January 1, 1996.

In no case shall violations of the lowest ground water classification be allowed. In addition, no violations of any ground water classifications adopted after January 1, 1980, may be allowed for more than 3 years from the date of an offer of a state grant for the construction of those facilities or after January 1, 1996, whichever is earlier.

The board shall not issue time schedule variances under subsection 1 to owners or operators of salt or sand-salt storage areas.

An owner or operator of a salt or sand-salt storage area who is in compliance with this section is exempt from the requirements of licensing under section 413, subsection 2-D.

An owner or operator is not in violation of a schedule established pursuant to this subsection if the owner or operator is eligible for a state grant to implement the