LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

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August 21, 1989 to August 22, 1989

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A discharge from a kraft pulp mill that is in compliance with this subsection is exempt from the provisions of subsection 3.

3. Instream color pollution standard. An individual waste discharge may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. Color increases are measured on a calendar quarterly basis. A discharge that is in compliance with this subsection is exempt from the provisions of subsection 2.

4. Schedule of compliance. No standard for color pollution control established under subsection 2, paragraph A or subsection 3 applies prior to July 1, 1993. The commissioner may establish a schedule for compliance with those provisions. The schedules must be as short as practicable and the commissioner may not establish a schedule that extends beyond July 1, 1995. The commissioner may establish interim and final dates for compliance. The commissioner shall base the schedules on a consideration of:

A. The technological feasibility, availability of equipment and economic impact of the steps necessary for compliance; and

B. The impact of the discharge on the existing and designated uses of the receiving waters.

5. Interstate waters. For the purposes of the commissioner's responsibilities under the Federal Water Pollution Control Act, Public Law 92-500, Section 401(a)(2), as amended, the commissioner shall find that the discharge of color pollution in excess of the standard established under subsection 2, paragraph A, into any surface water that subsequently enters the State affects the quality of the State's waters so as to violate the water quality requirements of the State.

6. Monitoring established; commissioner's report. The commissioner shall incorporate as part of the department's ongoing water quality monitoring program, monitoring of color, odor and foam pollutants. The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the progress achieved to meet the requirements of this section. The commissioner shall determine whether the standards established under this section permit the attainment of the designated uses of the surface waters receiving discharges from kraft pulp mills. If these designated uses are not being attained, the commissioner shall recommend standards sufficient to attain these uses and an estimate of any further costs required to implement the recommended standards. As part of this report, the commissioner shall hold hearings within each river basin affected by the discharge of color, odor and foam pollutants. The report must be given to the joint standing committee of the Legislature having jurisdiction over natural resources matters on or before January 1, 1994, and periodically thereafter as part of the review of water quality classifications under section 464, subsection 3, paragraph B.

Sec. 2. 38 MRSA §466, sub-§§2-A and 9-C are enacted to read:

2-A. Color pollution unit. "Color pollution unit" means that measure of water color derived from comparison with a standard measure prepared according to the specifications of the current edition of "Standard Methods for Examination of Water and Wastewater," adopted by the United States Environmental Protection Agency, or an equivalent measure.

9-C. Pounds per ton as unit of measure. "Pounds per ton" means the unit for measurement of color in the discharge from the production of wood pulp. The numerator of this unit is the product of the number of color pollution units multiplied by 8.34 multiplied by the volume of effluent discharged measured in millions of gallons. The denominator of this unit is measured in tons of actual production of unbleached wood pulp as measured on an air dried basis.

See title page for effective date.

CHAPTER 865

S.P. 632 - L.D. 1725

An Act to Amend Maine's Underground Oil Storage Law

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

Whereas, the 1990 construction season will begin before the 90-day waiting period for enactment is over; and

Whereas, the Department of Environmental Protection's backlog of unresolved contaminated wells from leaking underground oil storage facilities will continue to increase; and

Whereas, drinking water supplies contaminated by leaking underground oil storage facilities pose a serious threat to the public health and the environment and need to be replaced with clean, potable water sources; 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:

Sec. 1. 38 MRSA §562, as amended by PL 1989, c. 312, §16 and c. 546, §10, is repealed.

Sec. 2. 38 MRSA §562-A is enacted to read:

§562-A. Definitions

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

1. Ancillary equipment. "Ancillary equipment" means devices including, but not limited to, piping, fittings, flanges, valves and pumps used to distribute, meter or control the flow of oil to an underground storage tank.

2. Applicant. "Applicant" means the owner or operator of an underground oil storage facility that may have a discharge of oil and who is seeking coverage of eligible clean-up costs and 3rd-party damage claims from the fund.

3. Barrel. "Barrel" means 42 United States gallons at 60° Fahrenheit.

4. Cathodic protection tester. "Cathodic protection tester" means an underground storage tank installer certified by the Maine Board of Underground Storage Tank Installers or a person certified by the commissioner pursuant to section 567-A.

5. Corrosion expert. "Corrosion expert" means a person who is certified by the commissioner pursuant to section 567-A, as qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks.

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

7. Double-walled tank. "Double-walled tank" means an underground oil storage tank providing no less than 300° secondary containment, interstitial space monitoring and secondary containment for pressurized product delivery pipe connections.

8. Existing underground oil storage facility or existing underground oil storage tank. "Existing underground oil storage facility" or "existing underground oil storage tank" means any facility or tank, as defined in subsections 21 and 22, fully installed as of the effective date of this Act, the location of which has not changed.

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

10. Gasoline. "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.

11. Heavy oil. "Heavy oil" means forms of oil that must be heated during storage, including, but not limited to, #5 and #6 oils.

12. Leak. "Leak" means a loss or gain of 0.1 gallons or more per hour at a pressure of 4 pounds per square inch gauge, as determined by a precision test or other tank and piping tightness test of similar precision approved by the department.

13. Motor fuel. "Motor fuel" means oil that is motor gasoline, aviation gasoline, #1 or #2 diesel fuel or any grade of gasohol typically used in the operation of a vehicle or motor engine.

14. Occurrence. "Occurrence" means a contamination incident or prohibited discharge associated with one or more tanks or piping at an underground oil storage facility within one year.

15. Oil. "Oil" means oil, oil additives, 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.

16. 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.

17. 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 is registered where a prohibited discharge has occurred;

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; or

D. Any person who owned or operated the underground oil storage facility from the time any oil arrived at that facility.

18. 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. That system may include, but is not limited to, impervious liners compatible to the products stored, double-walled tanks or any other method approved by the department that is technically feasible and effective.

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

20. Underground gasoline storage tank. "Underground gasoline storage tank" means a single tank or container, 10% or more of which is underground, together with associated piping and dispensing facilities and that is used, or intended to be used, for the storage or supply of gasoline. The term does not include multiple tanks or containers that are situated on or above the surface of a floor and in such a manner that they may be readily inspected. An underground gasoline storage tank is a type of underground oil storage facility.

21. 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 22, 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. Underground oil storage facility also includes piping located under any land at a single location associated with above ground storage tanks and containing 10% or more of the facility's overall volume capacity.

22. 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 that is used, or intended to be used, for the storage, use, treatment, collection, capture 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 on or above the surface of a floor and in such a manner that they may be readily inspected.

Sec. 3. 38 MRSA §563, sub-§2, as amended by PL 1987, c. 491, §7, is further amended to read:

2. Information required for registration. The owner or operator of an underground oil storage facility shall provide the ~~department~~ commissioner with the following information on a form in triplicate to be developed and provided by the ~~department~~ commissioner; one copy to be submitted to the ~~department~~ commissioner, 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~~ The location of the facility shown on a United States Geologic Survey topographic map for facilities located in rural areas or in relation to the nearest intersection for facilities located in urban areas 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, replacement or retrofitted ~~tanks~~ facilities, 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~~ other forms of leak detection or equipment to be installed pursuant to section 564, subsection 1, paragraph ~~C~~ A and, ~~where~~ when applicable, the method of retrofitting leak detection pursuant to section 564, subsection 1 or 1-A; ~~and~~

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

I. Expiration date of tank manufacturer's warranty.

~~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~~ The owner or operator shall comply with the requirements of paragraph C by January 1, 1991.

Sec. 4. 38 MRSA §563, sub-§3, as amended by PL 1987, c. 402, Pt. A, §199, is further amended to read:

3. Amended registration required. The owner or operator of an underground oil storage facility shall file an amended registration form with the ~~department~~ commissioner immediately upon any change in the information required pursuant to subsection 2, including any modifications to the facility or a change of ownership. The board may establish, by rule, a late registration period not to exceed 10 business days in duration. ~~No~~ A fee may not be charged for filing an amended registration.

Sec. 5. 38 MRSA §563, sub-§4, as enacted by PL 1985, c. 496, Pt. A, §14, is repealed and the following enacted in its place:

4. Registration fees. The owner or operator of an underground oil storage facility shall pay an annual fee to the department of $35 for each tank located at the facility, except that single family homeowners are not required to pay a fee for a tank at their personal residence. Annual payments must be paid on or before January 1st of each calendar year.

Sec. 6. 38 MRSA §563, sub-§5, as repealed and replaced by PL 1987, c. 491, §8, is repealed and the following enacted in its place:

5. Penalty for failure to submit amended registration. Any person who has not submitted an amended registration form in accordance with subsection 3 shall pay a late fee of $100. This does not preclude the commissioner from seeking civil penalties from any person who fails to register a facility or tank.

Sec. 7. 38 MRSA §563, sub-§§7 and 8 are enacted to read:

7. Supplier notification requirement. Any person who sells a tank intended to be used as an underground oil storage tank shall notify the purchaser in writing of the purchaser's obligations under this section.

8. Certification of proper installation. Owners of new and replacement facilities shall ensure that the installer provides certification to the commissioner, within 30 days of completion of installation, that the materials and methods used comply with the applicable installation standards of this subchapter.

Sec. 8. 38 MRSA §563-A, sub-§1-A is enacted to read:

1-A. Exception. Airport aviation fuel hydrant piping systems are exempt from the schedule in subsection 1 provided that corrosion-induced leaks have not occurred and the system is not located in a sensitive geologic area. Owners and operators of airport aviation fuel hydrant piping systems must meet all applicable requirements of section 564 and of this subchapter.

Sec. 9. 38 MRSA §563-B, sub-§1, as enacted by PL 1987, c. 491, §10, is amended to read:

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

Sec. 10. 38 MRSA §564, as amended by PL 1989, c. 312, §17 and c. 593, §1, is further amended to read:

§564. Regulation of underground oil storage facilities used to store motor fuels or 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 to store motor fuel or used in the marketing and distribution of oil to others. These rules must ensure that requirements and standards governing facilities under this section assure that the State's program meets requirements under the United States Resource Conservation and Recovery Act, Subtitle I, as amended. These rules are limited to the following requirements.

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

A. All new and replacement tanks ~~shall~~, piping and below ground ancillary equipment must be constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the ~~Department of Environmental Protection~~ department. All new and replacement tanks must include secondary containment, monitoring of the interstitial spaces for all piping ~~shall be constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the Department of Environmental Protection~~ and below ground ancillary equipment except for suction piping systems installed in accordance with subsection 1-A. Both tanks and piping must be constructed of materials compatible with the product to be stored. Anchoring is required of tanks when located in a site where the ground water is expected to reach the bottom of the tank or in a 100-year flood plain.

B. All new and replacement facilities ~~shall~~ must be installed in accordance with the equipment manufacturer's specifications and nationally accepted standards and by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and ~~shall~~ must be registered with the ~~department~~ commissioner prior to installation pursuant to section 563. Underground gasoline storage tanks may be removed by an underground gasoline storage tank remover who has been properly certified pursuant to Title 32, chapter 104-A. New and replacement impressed current cathodic protection systems must be designed by a corrosion expert.

~~C. For new and replacement facilities in sensitive geologic areas or in the shoreland area, as defined in section 435, 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 facil-~~

~~ity, 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 around the tank or around the perimeter of the facility sufficiently sampled and tested to detect any discharge of oil or contamination of ground water from a facility.~~

~~D. The requirements set forth in paragraph B for new and replacement facilities 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 facility is to be installed over a polluted aquifer where no unreasonable additional harm to public health and safety or to the environment can occur.~~

1-A. Leak detection standards and procedures for existing facilities. Facility owners shall implement one of the leak detection methods listed in this subsection or properly abandon a facility in accordance with section 566-A. The leak detection system must be capable of detecting a leak within 30 days with a probability of detection of 95%. Facility owners shall retrofit leak detection for facilities with pressurized piping by December 1, 1990, and facilities with suction piping by December 1, 1991. Leak detection methods are as follows:

A. Monthly reconciliation of daily product inventory data and an annual precision test of all tanks and piping. Pressurized piping must be retrofitted with an in-line leak detector; or

B. Installation of one of the following leak detection systems:

(1) Secondary containment of all underground oil storage facility components or secondary containment for the tank and single-walled containment for suction piping sloped evenly to the tank and equipped with a single check valve under the pump;

(2) Continuous monitoring for free product in monitoring wells installed in the excavated area around the tank or tanks, and to detect a leak or discharge of oil from the piping not installed in accordance with subparagraph (1), one of the following:

(a) Continuous vapor monitoring;

(b) Annual tightness testing;

(c) Secondary containment with interstitial space monitoring; or

(d) Other methods of leak detection approved by the department;

(3) Continuous vapor 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;

(4) Manual ground water sampling capable of detecting the presence of at least 1/8 inch of free product on top of the ground water table in a reasonable number of ground water monitoring wells installed in the excavated area, and to detect a leak or discharge of oil from the product piping not installed in accordance with subparagraph (1), one of the following:

(a) Continuous vapor monitoring;

(b) Annual tightness testing;

(c) Secondary containment with interstitial space monitoring; or

(d) Other methods of leak detection approved by the department;

(5) Automatic tank gauging that can detect a 0.2 gallon per hour loss, and to detect a leak or discharge of oil from product piping not installed in accordance with subparagraph (1), one of the following:

(a) Continuous vapor monitoring;

(b) Annual tightness testing;

(c) Secondary containment with interstitial space monitoring; or

(d) Other methods of leak detection approved by the department; or

(6) Other leak detection systems approved by the department that can detect a 0.2 gallon per hour leak rate or a leak of 150 gallons in 30 days with a 95% probability of detecting a leak and a 5% chance of false alarm.

Ground water monitoring for the detection of leaks may only be used to meet the requirements of this paragraph where the ground water table is never less than 20 feet from the ground surface and the hydraulic conductivity of the soils between the tank and monitoring wells is not less than 0.01 centimeters per second.

New and replacement piping must be equipped with leak detection. Pressurized piping must be equipped with an automated in-line leak detector and be monitored by a leak detection system listed in paragraph B. Suction piping must be installed to operate at less than atmospheric pressure, sloped to drain back into the tank with a loss of suction and installed with only one check valve located below and as close as practical to the suction pump. Product piping that does not meet these suction piping criteria must be monitored by a leak detection system listed in paragraph B.

1-B. Overfill and spill prevention equipment. Overfill and spill prevention equipment is required for all new, replacement and existing facilities. The board may adopt a phase-in schedule for existing facilities to meet this requirement.

2. Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks. The board's rules ~~may~~ must 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~~ must be reported to the ~~department~~ commissioner. Annual statistical inventory analysis is not required for double-walled tanks equipped with interstitial space monitors;

C. ~~Annual voltage~~ Voltage readings for cathodically protected systems by a cathodic protection tester 6 months after installation and annually thereafter;

D. Monthly inspections by a cathodic protection tester 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~~ must be submitted to the ~~department~~ commissioner by the facility owner and the person who conducted the test;

E-1. Proper calibration, operation and maintenance of leak detection devices;

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~~ commissioner 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 or by other leak detection methods; ~~and~~

(4) Failure of a tank or piping precision test ~~or~~, hydrostatic ~~pipe~~ test; or other tank or piping tightness test approved by the department;

(5) Discovery of oil off site on or under abutting properties, including nearby utility conduits, sewer lines, buildings, drinking water supplies and soil; and

(6) Notwithstanding this paragraph, any actual leaks or discharges of oil that occur on the premises, including, but not limited to, spills, overfills and leaks, whether or not cleaned up;

H. Compatibility of the materials from which the facility is constructed and the product to be stored;

I. Owners and operators, upon request by the commissioner, to sample their underground oil tanks, to maintain records of all monitoring and sampling results at the facility or the facility owner's place of business and to furnish records of all monitoring and sampling results to the commissioner or to permit the commissioner or the commissioner's representative to inspect and copy those records; and

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

~~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.~~

3. Replacement of tanks at facilities where leaks have been detected. If replacement or removal is re-

quired 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 and all piping ~~which~~ that is not constructed of noncorrosive material or is not cathodically protected against corrosion 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~~ commissioner. 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~~ commissioner instead. If the results of the statistical inventory analysis indicate evidence of a leak at the facility or that the inventory data is not available or is not sufficiently reliable to make a determination that the facility is or is not leaking, the ~~department~~ commissioner may require that all remaining tanks and piping at the facility be precision tested, except that precision testing ~~shall~~ is not ~~be~~ required ~~where~~ when 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~~ commissioner 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~~ must be submitted to the ~~department~~ commissioner, and all tanks and piping found to be leaking ~~shall~~ must be removed pursuant to section ~~566~~ 566-A, or repaired to the satisfaction of the ~~department~~ commissioner.

4. Sampling of monitoring wells. ~~Where~~ When a monitoring well is installed at an underground oil storage facility storing motor fuel or used for the marketing and distribution of oil, the owner or operator ~~shall be~~ is required to sample that well at least ~~every 6 months~~ weekly; 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~~ commissioner any sampling results showing ~~evident~~ evidence of a possible leak or discharge of oil.

5. Mandatory facility replacement. Upon the expiration date of a manufacturer's warranty for a tank installed in accordance with subsection 1, the tank and its associated piping must be removed from service and properly abandoned in accordance with section 566-A.

Sec. 11. 38 MRSA §565, as amended by PL 1989, c. 312, §18 and c. 593, §2, is further amended to read:

§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 to store motor fuels or in the marketing and distribution of oil to others. These rules ~~shall~~ apply to all underground heating oil storage facilities 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 facilities 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 facilities. Design and installation standards for new and replacement tanks are as follows.

A. The installation of new or replacement tanks and piping constructed of bare steel or asphalt-coated steel is prohibited. All new and replacement facilities must include secondary containment and continuous monitoring of the interstitial space for all tanks, piping and ancillary equipment. All below ground ancillary equipment must be constructed of fiberglass, cathodically protected steel or equally noncorrosive materials approved by the department.

B. All new and replacement facilities ~~shall~~ must be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and ~~shall~~ must be registered with the ~~department~~ commissioner prior to installation pursuant to section 563. Underground gasoline storage tanks may be removed by an underground gasoline storage tank remover who has been properly certified pursuant to Title 32, chapter 104-A.

B-1. New and replacement facilities with a capacity in excess of 1,100 gallons must prevent overfills and spills by the installation of overfill catchment basins, the use of automatic shut-off devices or the use of an automatic alarm when the tank is 90% full.

~~C. The installation of monitoring wells shall be required for new and replacement facilities with a capacity in excess of 1,100 gallons where physically or technically practicable. Monitoring wells shall not be required where double wall tanks equipped with interstitial space monitors are utilized.~~

~~D. For new and replacement facilities in sensitive geologic areas or in the shoreland area, as defined in section 435, the owner shall install one of the following:~~

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

~~(2) A reasonable number of monitoring wells located around the tank or around the perimeter of the facility sufficiently sampled and tested to detect any discharge of oil or contamination of ground water from a facility.~~

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~~ is required to report promptly upon discovery to the ~~department~~ commissioner any evidence of a leak or discharge of oil.

~~B. 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 15 years old, except that the owner or operator may elect to install monitoring wells as an alternative to precision testing. 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-A or repaired to the department's satisfaction.~~

C. ~~Where~~ When a monitoring well is installed at ~~a~~ an existing facility governed by this section, the owner or operator of the facility ~~shall be~~ is 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~~ commissioner any sampling results showing evidence of a possible leak or discharge of oil.

D. For leak detection devices other than monitoring wells installed at an existing facility governed by this section, the owner or operator of the facility is required to test for leaks at least once every 6 months; to maintain records of all testing results at the facility or at the facility owner's place of business; and to report to the commissioner any test results showing evidence of a possible leak or discharge of oil.

Sec. 12. 38 MRSA §566-A, sub-§§2 and 3, as enacted by PL 1987, c. 491, §14, are amended to read:

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~~ commissioner and the fire department in whose jurisdiction the underground oil facility or tank is located at least ~~10~~ 30 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 requirements and procedures to conduct a site assessment for the presence of discharges of oil prior to completion of abandonment at facilities storing motor fuel or used in the marketing and distribution of oil and 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~~ determined not physically possible or practicable.

Sec. 13. 38 MRSA §567-A is enacted to read:

§567-A. Certifications

1. Cathodic protection tester. The commissioner may certify a person as a cathodic protection tester on finding that the person understands the principles and measurements of all common types of cathodic protection systems as applied to buried metal piping and tank systems. At a minimum, these persons must have education and experience in soil resistivity, stray current, structure-to-soil potential and component electrical isolation measurements of buried metal piping and tank systems.

2. Corrosion expert. The commissioner may certify a person as a corrosion expert on finding that the person has a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by professional education and related practical experience and is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. That person must be accredited as being qualified by the National Association of Corrosion Engineers or be a professional engineer registered in this State who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Sec. 14. 38 MRSA §568, as amended by PL 1987, c. 787, §14, is further amended to read:

§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 and any responsible party shall immediately undertake to remove that discharge to the ~~department's~~ commissioner's satisfaction. Notwithstanding this requirement, the commissioner 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~~ commissioner. Any unexplained discharge of oil~~, petroleum products or their by-products~~ to ground water within state jurisdiction ~~shall~~ must be removed by or under the direction of the ~~department~~ commissioner. Any expenses involved in the removal of discharges, whether by the person causing the ~~same~~ discharge, the person reporting the ~~same or~~ discharge, the ~~department by itself~~ commissioner or ~~through its~~ the commissioner's agents or contractors, may be paid in the first instance from the Ground Water Oil Clean-up Fund, including any expenses incurred by the State under subsection 3, and any reimbursements due that fund ~~shall~~ must be collected in accordance with section 569.

2. Restoration of water supplies. The ~~department~~ commissioner 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~~ with alternatives the commissioner finds are cost-effective ~~alternative that is~~, technologically feasible and reliable and ~~which~~ that effectively ~~mitigates~~ mitigate or ~~minimizes~~ minimize damage to and ~~provides~~ provide 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, maintenance and depreciation of the water supply for a period not exceeding 20 years. The ~~department~~ commissioner shall consult with the affected party prior to selecting the alternative to be implemented.

3. Issuance of clean-up orders. The ~~department~~ commissioner 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~~ that relate or may relate to the discharge under investigation, from any person who the ~~department~~ commissioner has reason to believe may be a responsible party. If the ~~department~~ commissioner 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 issue a clean-up order requiring the responsible party to cease the discharge immediately or to take action to prevent further discharge and to mitigate or terminate the threat of human exposure to contamination or to explosive vapors. In addition to other actions, the commissioner may, as part of any clean-up order, require the responsible party to provide temporary drinking water and water treatment systems approved by the commissioner, to sample and analyze wells and to compensate 3rd-party damages resulting from the discharge. The commissioner 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 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~~ with water supplies the commissioner finds are cost effective, technologically feasible and reliable and ~~which~~ that effectively ~~mitigates~~ mitigate or ~~minimizes~~ minimize damage to, and ~~provides~~ provide adequate protection of, the public health, welfare and the environment. Clean-up orders ~~shall only~~ may be issued only in compliance with the following ~~requirements~~ procedures.

A. Any orders issued under this section ~~shall~~ must 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 board shall appoint an independent hearing examiner to hold a hearing ~~shall be held by the board within 15 working days~~ as soon as possible after receipt of the application. The nature of the hearing ~~before the board shall~~ must be an appeal. At the hearing, all witnesses ~~shall~~ must be sworn and the ~~department~~ commissioner 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~~ shifts 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~~ hearing examiner shall make findings of fact. The board shall vote to accept, reject or modify the findings of the hearing examiner at the next regularly scheduled board meeting and shall continue, revoke or modify the commissioner's 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; punitive damages. Enforcement, penalties and punitive damages are as follows.

A. Any person who causes, or is responsible for, a discharge to ground water in violation of section 543 ~~shall~~ is not ~~be~~ subject to any fines or penalties for a violation of section 543 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.

B. Any responsible party who fails without sufficient cause to undertake removal or remedial action promptly in accordance with a clean-up order issued pursuant to subsection 3 is not eligible for coverage under the fund pursuant to section 568-A, subsection 1, and may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount of any sums

expended from the fund in addition to reasonable attorney's fees as a result of ~~such~~ failure to take prompt action.

C. Notwithstanding paragraphs A and B, a person who violates any laws or rules administered by the department under this subchapter is subject to the fines and penalties in section 349.

~~**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.~~

5-A. Land acquisition. Upon approval of the board by 2/3 majority vote, the department may acquire by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property, to undertake remedial actions in response to a discharge of oil, including, but not limited to:

A. Actions to prevent further discharge and to mitigate or terminate the threat of a discharge of oil;

B. Actions to clean up and remove oil from the site; and

C. Replacement of water supplies contaminated by or at significant risk of contamination by a discharge of oil.

The department may exercise the right of eminent domain in the manner described in Title 35-A, chapter 65, to take and hold real property to provide drinking water supplies to replace those contaminated by a discharge and to undertake soil and ground water remediation to protect water supplies that are at significant risk of contamination. The department may transfer or convey to any person real property or any interest in real property once acquired.

Sec. 15. 38 MRSA §568-A is enacted to read:

§568-A. Fund coverage requirements

1. Eligibility for fund coverage. Eligibility for coverage by the fund of clean-up costs and eligible 3rd-party damage costs is governed by the following provisions.

A. The applicant must submit within 90 days of reporting the discharge, a written request to the commissioner to be covered by the fund. The request must include:

(1) A description of the discharge and the locations threatened or affected by the discharge, to the extent known;

(2) An agreement that the applicant shall pay the initial costs of cleanup and 3rd-party damage claims up to the deductible amount specified in subsection 2; and

(3) Documentation that the applicant is in substantial compliance with the requirements of paragraph B.

B. An applicant is in substantial compliance when the commissioner finds that the following requirements are met:

(1) The compliance schedule, in section 563-A, for nonconforming facilities except that those facilities or tanks required to be removed by October 1, 1989, have until October 1, 1990, to be removed before they are considered out of compliance;

(2) Any outstanding consent agreement or clean-up order issued by the commissioner under section 568, subsection 3, regarding violations of this subchapter;

(3) Any outstanding court order or consent decree regarding violations of this subchapter;

(4) For motor fuel storage and marketing and retail facilities, the following requirements:

(a) Applicable design and installation or retrofitting requirements for leak detection as covered by section 564, subsections 1 and 1-A;

(b) Section 564, subsection 1-B, overfill and spill prevention equipment, and any rules adopted pursuant to that subsection; and

(c) Section 564, subsection 2, paragraphs B to H, not including paragraph F, and any rules adopted pursuant to that subsection;

(5) For consumptive use heating oil facilities:

(a) Section 565, subsection 1, if applicable; and

(b) Section 565, subsection 2; and

(6) For waste oil, and heavy oil and airport hydrant facilities with discharges that are not contaminated with hazardous constituents, compliance with rules adopted by the board regarding:

(a) Design and installation, if applicable;

(b) Retrofitting of leak detection and corrosion protection, if applicable;

(c) Overfill and spill prevention;

(d) Monitoring of cathodic protection systems;

(e) Testing requirements for tanks and piping on evidence of a leak;

(f) Maintenance of a leak detection system; and

(g) Reporting leaks.

The burden of proof is on the department to show a lack of substantial compliance. The commissioner shall make written findings of fact when making a determination under this paragraph. These findings are subject to appeal to the board. The board's decision is subject to judicial review pursuant to Title 5, chapter 375, subchapter VII.

C. The facility for which the applicant is applying for coverage is not owned or operated by the Federal Government.

D. In any one calendar year, an applicant may only apply for coverage of clean-up costs and 3rd-party damage claims that total less than $2,000,000 aggregate. This limit includes claims made in subsequent years on those discharges.

E. An applicant is not eligible for coverage under this section if the applicant has any one or combination of the following relationships with an entity that owns or operates an oil refinery:

(1) Is owned directly by or directly owns that entity;

(2) Is a franchisee of that entity;

(3) Is a member of a partnership or limited partnership that includes that entity;

(4) Is a subsidiary of that entity; or

(5) Is a parent corporation of that entity.

An applicant is not subject to this exclusion from coverage if its sole relationship with the entity is a contractual agreement to purchase oil from the entity exclusively for retail sale or for the applicant's consumption.

2. Deductibles. Applicants eligible for coverage by the fund under subsection 1, must pay the initial costs for expenses resulting from cleaning up and compensating eligible 3rd-party damages from a discharge prohibited under section 543 on a per occurrence basis according to the following schedule:

Number of facilities owned	Costs paid by applicant
1	$2,500
2 to 5	5,000
6 to 10	10,000
11 to 30	50,000
over 30	100,000

The commissioner shall pay any eligible additional costs up to $1,000,000 associated with activities under section 569, subsection 5, paragraphs B, D and I, resulting from a discharge from the fund. The commissioner may pay any costs eligible for coverage by the fund above $1,000,000 from the fund but the commissioner shall recover these expenditures from the responsible party pursuant to section 569.

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

4. Agreements. Any payments to or on behalf of applicants for clean-up activities undertaken by the applicant must be pursuant to a written agreement between the applicant and the commissioner. The agreement must include, but is not limited to:

A. A plan and schedule for remedial actions;

B. A provision for enforcement of the agreement and sanctions for nonperformance;

C. Provisions for cost accounting and reporting of costs incurred in remediation activities; and

D. An agreement to clean up the site to the satisfaction of the commissioner.

5. Uncompensated 3rd-party damage claims. If within 12 months of a claim, a person designated as a responsible party by the commissioner refuses to pay 3rd-party damage claims not covered by the fund, the commissioner may pay these claims from the fund pursuant to section 569, subsection 2-A. Any amount so paid must

be recovered from the responsible party pursuant to section 569.

Sec. 16. 38 MRSA §569, as amended by PL 1989, c. 502, Pt. B, §60 and c. 543, §6, is further amended to read:

§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~~ are credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements, assessments and other fees and charges related to this subchapter. To this fund ~~shall be~~ are charged any and all expenses of the department related to this subchapter, including administrative expenses, payment of ~~3rd party~~ 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 and any obligations of the State pursuant to Title 10, section 1024, subsection 1.

The ~~Board of Environmental Protection~~ commissioner 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~~ must be repaid with interest to the fund of origin in as prompt a manner as revenues allow. ~~The~~ at a 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~~ must 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~~ must be credited to the Ground Water Oil Clean-up Fund.

A 3rd-party commercial risk pool account is established within the fund to pay 3rd-party damage claims for claims resulting from discharges from bare steel and noncathodically protected underground storage tanks used for commercial purposes up to $100,000 per claimant including those costs in subsection 5, paragraphs D, E and E-1, associated with those claims. The commissioner may retain consultants to administer these funds.

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~~ must be made in accordance with section 570-A.

2-A. Third-party damages. Any person claiming to have suffered actual economic damages ~~to real estate or personal~~ including, but not limited to, property ~~or~~ damage, loss of income and medical expenses 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~~ 2 years after the occurrence or discovery of the ~~discharge~~ injury or damage, whichever date is later, to the ~~board~~ commissioner 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 commissioner may contract with insurance professionals to process claims. The board, upon petition and for good cause shown, may waive the ~~6-month~~ 2-year limitation for filing damage claims. For claims made on discharges eligible for coverage by the 3rd-party commercial risk pool account, the commissioner shall pay the first $100,000 per claimant out of the 3rd-party commercial risk pool account as long as funds are available. The commissioner shall pay any claims that exceed $100,000 or available money in the 3rd-party commercial risk pool account from the fund.

A. If a claimant is not compensated for 3rd-party damages by the responsible party or the expenses are above the applicant's deductible and the claimant and the ~~board are able to~~ commissioner agree as to the amount of the damage claim, the ~~board~~ commissioner 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~~ commissioner 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~~ is subject to subsection 3-A.

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~~ must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made ~~shall be~~ are 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~~ may 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.

G. It is the intent of the Legislature that the remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive. A court awarding damages to a claimant as a result of a discharge of oil to ground water prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative.

H. Payments from the fund for 3rd-party damage claims may not exceed $200,000 per claimant.

3-A. 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~~ commissioner.

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~~ must be heard and determined by the same hearing examiner.

C. Hearings before the hearing examiner ~~shall be~~ are informal and the rules of evidence prevailing on judicial proceedings ~~shall~~ are 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 the hearing examiner for determination.

D. Determinations made by the hearing examiner ~~shall be~~ are 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 the commissioner shall withhold certification ~~shall be withheld~~ until all claims that the ~~department~~ commissioner has against the responsible party with respect to the discharge have been satisfied.

~~**4. Funding.** A fee of 9¢ per barrel of gasoline and 8¢ 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 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, except that the amount of these fees in excess of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products, other than gasoline and liquid asphalt, shall be transferred by the department upon receipt as follows.~~

~~A. Sixty-two and one half percent of the excess shall be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.~~

~~B. Thirty-seven and one half percent of the excess shall be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned.~~

~~After an aggregate sum of $5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of $3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to this subsection shall be reduced by 6¢ per barrel.~~

4-A. Funding. Funding for the Ground Water Oil Clean-up Fund is as follows.

A. Until January 1, 1994, and after January 1, 1998, a fee is assessed of 44¢ per barrel of gasoline; 25¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel; and 10¢ per barrel of #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7, and on a person required to register with the commissioner under section 545-B, who first transports oil in the State. These fees must be paid monthly on the basis of records certified to the commissioner. This subsection does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and which is subject to fees established under section 1319-I.

B. After January 1, 1994, the fees assessed in paragraph A increase to 48¢ per barrel of gasoline and 27¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid

asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel. The fees assessed on #6 fuel oil remain at 10¢ per barrel. This paragraph is repealed on January 1, 1998.

C. The owner or operator of an underground oil storage facility that stores motor fuel or is used in the marketing and distribution of oil shall pay an annual fee of $130 per tank not constructed of fiberglass, cathodically protected steel or other noncorrosive material. These funds must be deposited in the 3rd-party commercial risk pool account. If the funds in the account are inadequate to pay the claims, costs and expenses for which payment from the account is authorized, the board may increase the per tank assessment up to $500 per tank. Any shortfall in the account occurring after the maximum assessment has been levied must be paid out of the fund. Upon payment of the annual fee, the commissioner shall issue a certificate of coverage for the tank.

4-B. Allocation from Ground Water Oil Clean-up Fund. From the fees assessed in subsection 4-A, 6¢ per barrel of gasoline, refined petroleum products and their by-products, other than liquid asphalt, must be transferred by the department upon receipt as follows.

A. Sixty-two and one half percent of the 6¢ per barrel fee must be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.

B. Thirty-seven and one half percent of the 6¢ per barrel fee must be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned.

After an aggregate sum of $5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of $3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to subsection 4-A must be reduced by 6¢ per barrel.

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

A. Administrative expenses, personnel expenses and equipment costs of the department related to the administration and enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section. Administrative expenses, personnel expenses and equipment costs may not exceed $1,734,000 per fiscal year;

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 not paid by a responsible party or an applicant for coverage by the fund;

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

D. Payment of the ~~3rd-party~~ 3rd-party damage claims awarded in accordance with this section that are not paid by the responsible party or applicant for coverage by the fund;

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

E-1. Payment of costs of the administration of the 3rd-party commercial risk pool account;

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

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~~ that may have adverse economic effects and ~~which~~ that occur subsequent to the allocation, when the studies are deemed necessary by the commissioner; ~~and~~

H. All costs associated with the Board of Underground Oil Storage Tank Installers~~.~~; and

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

5-A. Reporting mechanism. If the potential liabilities of the fund exceed projected income for the fund, the commissioner shall notify the joint standing committee of the Legislature having jurisdiction over energy and natural resources within 30 days of determining that a shortfall will occur and submit recommendations for revising coverage of the fund or generating the needed income.

6. Reimbursements to the Ground Water Oil Clean-up Fund. The ~~department~~ commissioner shall seek recovery for the use of the fund of all sums greater than $1,000,000 per occurrence, expended from the fund pursuant to subsection 5, paragraph I, for an applicant for coverage by the fund found by the commissioner to be

eligible under section 568-A, subsection 1, and all sums expended from the fund when no applicant was found by the commissioner to be eligible under section 568-A, subsection 1, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E ~~and~~, G and I, 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~~ commissioner 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~~ must 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; or

~~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~~ means 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~~ must be entered for the party involved. The findings of the board ~~shall be~~ are conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred, not a right granted.

8. Extinguishing the 3rd-party commercial risk pool account. When all claims against the 3rd-party commercial risk pool account have been extinguished and, in the judgment of the commissioner, provision for payment of any potential 3rd-party claims against the account have been made, the commissioner shall refund any excess funds in the account to those persons who paid an annual fee into the account. The commissioner shall make refunds in the proportion that the owner's or operator's total contribution bears to the total contributions to the fund. Two years after notice to the operator's or owner's last address, unclaimed funds in the 3rd-party commercial risk pool account escheat to the State if the party has made no claim for refund.

When the State Auditor performs an annual postaudit of the Ground Water Oil Clean-up Fund, the auditor shall prepare a separate audit report of the 3rd-party commercial risk pool account. The report must be maintained by the commissioner and made available upon request to participants in the account.

Sec. 17. 38 MRSA §570, as repealed and replaced by PL 1987, c. 735, §72, is amended to read:

§570. Liability

Because it is the intent of this subchapter to provide the means for rapid and effective cleanup and to minimize direct damages as well as indirect damages and the proliferation of 3rd-party claims, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569, subsection 5, paragraphs B, D, E ~~and~~, G and I, or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure, except for costs found by the commissioner to be eligible for coverage under the fund. The commissioner shall demand reimbursement of costs and payment of damages that are not eligible for coverage by the fund to be recovered under this section and payment ~~shall~~ must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove the fact of the prohibited discharge and that a defendant is a responsible party, as defined in section 562.

A person who would otherwise be a responsible party ~~shall~~ is not ~~be~~ subject to liability under this section, if that person can establish by a preponderance of the evidence that the liability pursuant to this section for which that person would otherwise be responsible, was caused solely by:

1. Act of God. An act of God; or

2. Act of war. An act of war;

~~**3. Act or omission.** An act or omission of a 3rd party who is not that person's employee, agent or lessee. A 3rd party may include a subsequent owner or operator of the facility. A person seeking relief from liability for the acts or omissions of a 3rd party shall also demonstrate by a preponderance of the evidence that that person exercised due care with respect to the oil and underground oil storage facility concerned, taking into consideration the characteristics of that oil and facility, in light of all relevant facts and circumstances and that that person took precautions against foreseeable acts or omissions of any such 3rd party and the consequences that could foreseeably result from such acts or omissions; or~~

~~**4. Combination.** Any combination of subsections 1 to 3.~~

Sec. 18. 38 MRSA §570-A, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

§570-A. Budget approval

The ~~department~~ commissioner shall submit ~~its~~ budget recommendations for disbursements from the fund in accordance with section 569, subsection 5, paragraphs A, C, F ~~and~~, G and H for each biennium. The budget ~~shall~~ must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures ~~therefrom~~ from the fund as approved by the commissioner. Expenditures pursuant to section 569, ~~subsections~~ subsection 5, paragraphs B, D ~~and~~, E, E-1 and I may be made as authorized by the State Controller following approval by the commissioner.

Sec. 19. 38 MRSA §570-B, as amended by PL 1985, c. 785, Pt. B, §179, is further amended to read:

§570-B. Personnel and equipment

The ~~department~~ commissioner shall establish and maintain at ~~such~~ appropriate 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 Civil Service 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~~ must be paid from the Ground Water Oil Clean-up Fund established by this subchapter.

Sec. 20. 38 MRSA §570-F, 2nd ¶, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:

The board shall adopt rules for underground oil storage ~~tanks~~ facilities for storing waste oil. The board shall also promulgate rules governing field-constructed, airport hydrant and heavy oil underground oil storage facilities. These rules ~~shall~~ are not ~~be~~ limited by the provisions of subchapter II-B.

Sec. 21. 38 MRSA §570-H is enacted to read:

§570-H. Reporting requirements

The following reports are required.

1. Wrap-around insurance. On or before March 1, 1991, the Bureau of Insurance shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources on the availability of insurance to cover costs not covered by the Ground Water Oil Clean-up Fund. The report must include information on the cost of premiums and the characteristics of coverage.

2. Adequacy of fund. On or before February 15, 1992, the commissioner with the cooperation of the Bureau of Insurance, shall report to the joint standing committee of the Legislature with jurisdiction over energy and natural resources on the department's experience administering the fund, the 3rd-party commercial risk pool account, clean-up activities and 3rd-party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change.

3. Review of availability. By January 15, 1998, the agency of the State having jurisdiction over insurance matters shall review the availability of on-site clean-up and 3rd-party liability insurance for underground oil storage facilities. This assessment must include the identification of any gaps in the availability of coverage, costs of coverage and a review of funds in other states providing insurance coverage.

Sec. 22. Allocation. The following funds are allocated from the Ground Water Oil Clean-up Fund to carry out the purposes of this Act.

	1990-91
ENVIRONMENTAL PROTECTION, DEPARTMENT OF	
Ground Water Oil Clean-up Fund	
Positions	(15)
Personal Services	$465,512
All Other	8,438,787
Capital Expenditures	199,000
Provides funds for 3 Assistant Engineer positions, 3 Environmental Specialist IV positions, 2 Environmental Specialist III positions, 2 Geologist positions, 2 Oil and Hazardous Materials Specialist II positions, a Senior Geologist position, an Oil and Hazardous Materials Specialist I position, a Data Control Clerk position, general operating expenses, expected clean-up costs and 3rd-party liability expenses.	
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$9,103,299
ATTORNEY GENERAL, DEPARTMENT OF THE	
Administration - Attorney General	
Positions	(2)
Personal Services	$65,540
All Other	3,000
Provides funds for 2 Assistant Attorney General positions and related expenses to carry out this Act.	

DEPARTMENT OF THE ATTORNEY GENERAL	
TOTAL	$68,540
TOTAL ALLOCATIONS	$9,171,839

Sec. 23. Applicability. An applicant may only apply for coverage by the fund of discharges that have not had any expenditure of state funds for clean-up costs or 3rd-party damage claims as of April 1, 1990, or discharges that have had no clean-up orders issued as of April 1, 1990.

Sec. 24. Effective date. Sections 15 to 22 of this Act take effect July 1, 1990, except that part of section 16 that amends Title 38, section 569, subsections 4, 4-A and 4-B, which takes effect May 1, 1990.

Sec. 25. Repeal. Sections 15 to 23 of this Act are repealed December 31, 1999.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 19, 1990, unless otherwise indicated.

CHAPTER 866

H.P. 1464 - L.D. 2041

An Act to Make Changes to Certain Motor Vehicle Laws

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

Whereas, this Act contains a provision providing an additional method of obtaining liability insurance for carriers transporting goods or passengers for hire; and

Whereas, many common carrier motor vehicle insurance policies are being renewed in the next month and it would be helpful to have this new provision in the law as soon as possible; 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. A-1. 29 MRSA §55-B, first ¶, as amended by PL 1983, c. 455, §8, is further amended to read:

Whenever the payment of any fee or fees required by this Title, or the payment of any use tax required to be collected by the Secretary of State under chapter 5, subchapter 1-A, results in a protest or is returned by the bank upon which it was drawn because of "insufficient funds," "account closed," "no account" or any other similar reason, the Secretary of State or any deputy or agent thereof, may promptly mail in accordance with section 2241, subsection 4 a notice of dishonor, as defined in Title 11, section 3-508, to the person liable for the fee, fees or tax, demanding payment thereof and warning the person that if the amount due is not paid within ~~5~~ 10 days after ~~receipt~~ mailing of the notice, suspension of the person's license, permit, certificate and all plates will result as provided in this section. If the person fails to pay the required amount within ~~5~~ 10 days after ~~receipt~~ mailing of the notice, the Secretary of State may, pursuant to chapter 17, ~~forthwith~~ immediately suspend all licenses, permits, certificates and plates of the person liable for the fee, fees or tax.

Upon receipt of a notification given by the State Tax Assessor in accordance with Title 36, section 1955-A or section 1955-B, the Secretary of State shall promptly mail a notice to the person liable for the tax warning such person that if the amount of tax due is not paid within 10 days after mailing of such notice, suspension of the registration certificate and plates issued for the vehicle in question will result. If the person fails to pay the required amount within 10 days after mailing of the notice, the Secretary of State shall, pursuant to chapter 17, immediately suspend the registration certificate and plates issued for the vehicle in respect to which the tax remains unpaid.

Sec. A-2. 29 MRSA §106, as amended by PL 1987, c. 397, §§1, 2, 3 and 10; and as amended by PL 1989, c. 71, §8, is further amended to read:

§106. Expiration date

The registration year for all vehicles, except automobiles, newly acquired motor trucks, truck tractors, motorcycles, mopeds, ~~and~~ motor-driven cycles~~,~~ and motor homes is from March 1st to the last day of February of the next calendar year. On and after February 1st, it is lawful to use and display on such vehicles the number plates or suitable devices in lieu thereof issued for the registration year. This section shall apply to motorcycles, mopeds and motor-driven cycles for reregistration in 1989 only.

1. New motor truck, truck tractor, motorcycle, moped, motor-driven cycle and motor home registrations. New motor truck, truck tractor, motorcycle, moped, ~~and~~ motor-driven cycle, and motor home registrations expire at the end of the month one year from the month of issuance.

2. Automobile registrations and reregistrations. Automobile registrations and reregistrations shall be in accordance with this subsection.

A. Automobile registrations expire annually on the last day of the month, one year from the month of issuance.