

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

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Chapters 1 - 590

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J.S. McCarthy Company
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

CHAPTER 454

H.P. 56 - L.D. 77

An Act to Improve Marine Oil Spill Prevention, Planning and Response

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

Whereas, the Commission to Study Maine's Oil Spill Clean-up Preparedness has reviewed the State's ability to respond to marine oil spills and has found that the response capability does not exist for a catastrophic oil spill along the Maine coast; and

Whereas, sweeping new federal legislation, the Oil Pollution Act of 1990, Public Law 101-380, 104 Stat. 484, was signed into law on August 18, 1990; and

Whereas, there are major efforts under way to address marine oil spill prevention, planning and response by others, including the United States Coast Guard, the Canadian Coast Guard, the Portland oil terminal operators and the industry-sponsored Marine Spill Response Corporation; and

Whereas, the fee that supports the Maine Coastal and Inland Surface Oil Clean-up Fund decreased from 4¢ to 3¢ per gallon in February 1991; and

Whereas, there is a need for the State to take further steps in oil spill prevention, planning, response and sensitive area protection; 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. 37-B MRSA §742, sub-§3 is enacted to read:

3. Oil spill emergency proclamation. In the event of a disaster due to an oil spill in coastal waters, the Commissioner of Environmental Protection shall directly represent the Governor in all direct abatement, clean-up and resource protection activities in coordination with federal, industry and other states' response teams. The agency shall assume the other functions prescribed in subsection 1, paragraph C, but does not have supervisory authority over the Department of Environmental Protection in the conduct of response activities on the water.

Sec. 2. 38 MRSA §546, sub-§4, ¶A, as amended by PL 1989, c. 546, §9, is further amended to read:

A. Operating and inspection requirements for facilities, vessels, personnel and other matters relating to licensee operations under this subchapter, including annual inspections of oil terminal facilities;

Sec. 3. 38 MRSA §546, sub-§4, ¶E, as amended by PL 1989, c. 868, §1, is further amended to read:

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds, including ~~periodic~~; unannounced the state marine oil spill contingency plan required under section 546-A. Those plans must include provision for annual drills, sometimes unannounced, to determine the adequacy of response plans and the preparedness of the response teams;

Sec. 4. 38 MRSA §546, sub-§§5 and 6 are enacted to read:

5. Facility response plans. Every facility subject to licensing under this section shall file with the department a copy of any oil discharge response plan submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484, or a statement that a plan is not required under federal law.

6. Vessel response plans. Every tank vessel, as defined under 56 United States Code, Section 2101, entering state waters shall file with the department a copy of any oil discharge response plan submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484, or a statement that a plan is not required under federal law.

Sec. 5. 38 MRSA §546-A, as enacted by PL 1989, c. 868, §2, is repealed and the following enacted in its place:

§546-A. State marine oil spill contingency plan

1. Plan. The commissioner shall develop by December 31, 1991 a preliminary state marine oil spill contingency plan. The commissioner shall hold a public hearing in the process of developing the plan. The commissioner shall consult and coordinate with other agencies and organizations developing information for oil spill response planning to prevent a duplication of effort and the creation of incompatible data and data bases.

2. Worst-case scenarios. The marine oil spill contingency plan must address a range of scenarios, including spills of 100,000 gallons, 1,000,000 gallons and 6,000,000 gallons and the worst-case scenario in each major port area in both favorable and adverse conditions. The worst-case

scenario in each major port area is the loss of an entire vessel of the following capacities:

- A. Portland: 30,000,000 gallons;
- B. Penobscot Bay and Penobscot River: 11,000,000 gallons;
- C. Portsmouth, New Hampshire: 13,000,000 gallons;
- D. St. John, New Brunswick: 90,000,000 gallons;
- E. Eastport: 100,000 gallons; and
- F. Elsewhere on the coast: 30,000 gallons.

3. Contents of plan. The marine oil spill contingency plan must include:

- A. The designation of a state oil spill coordinator;
- B. A clear definition of the roles of the department, the oil industry and the United States Coast Guard in various circumstances, as well as the roles of other state agencies including the Maine Emergency Management Agency;
- C. A clear definition of the State's role under the joint agreement between the United States and Canada known as CANUSLANT;
- D. An inventory of oil spill response equipment available within the State;
- E. A listing of sources for qualified, trained spill responders within the State;
- F. Preapproved criteria for use of dispersants, bioremediation and in situ burning, developed in consultation with the United States Coast Guard and other responsible agencies, and the names of the individuals authorized to make the final decision for the State on their use;
- G. Identification of sensitive areas and resources, and management strategies to protect them;
- H. Identification of resources for wildlife rehabilitation; and
- I. Identification of facilities for disposal of oily debris and for separation, transport and storage of recovered oil.

4. Considerations. In preparing the plan, the need for pre-positioned response teams and additional equipment must be considered.

5. Rulemaking, review and revision. By April 30, 1992, the board shall adopt by rule a state marine oil spill

contingency plan based upon the preliminary plan developed by the commissioner under subsection 1. The commissioner shall annually review and make recommendations to revise the plan, and the board shall act on those recommendations by rulemaking.

Sec. 6. 38 MRSA §§546-B and 546-C are enacted to read:

§546-B. Sensitive area identification and protection

1. Sensitive area identification and data management. The commissioner, in consultation with the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the State Planning Office, the United States Fish and Wildlife Service and other appropriate agencies and organizations, both public and private, shall assess the nature and extent of sensitive areas and resources in the marine environment that may be threatened by oil spills and develop a system to collect and maintain the necessary data. The commissioner shall ensure that the duplication of effort among agencies and creation of incompatible data and data bases are minimized.

2. Protection priorities. The board, in consultation with the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, the Department of Conservation and other appropriate agencies and organizations, shall establish policies and guidelines to set priorities for protection of sensitive areas in the event of an oil spill. In developing priorities, the board shall consider the interrelatedness of the marine environment, economic factors, species diversity and other appropriate factors.

3. Use of state geographic information system. The system developed pursuant to subsection 1 must be based on the state geographic information system to the maximum extent practicable. The commissioner is responsible for the design, implementation and execution of the marine oil spill prevention, planning and response system. The commissioner shall specify the format and types of data to be compiled by other agencies with money supplied by the fund. The format and digital conversion of the data must comply with standards developed by the state geographic information system and data must be added to that system's data base. The state geographic information system must provide technical assistance and serve as the final repository for final geographic information system data. Any persons employed for sensitive area mapping and supported by money from the fund must be involved in the digitization, quality assurance and control and training for sensitive area mapping. Development must proceed in 3 phases as follows:

- A. A pilot project for Casco Bay to be completed by December 31, 1991;
- B. The Penobscot River and Penobscot Bay area to be completed in 1992; and

C. The remainder of the coastline to be completed in 1993.

§546-C. Wildlife rehabilitation plan

1. Wildlife rehabilitation plan. The Department of Inland Fisheries and Wildlife, in consultation with the Department of Environmental Protection, the Department of Marine Resources, the Department of Conservation, the United States Fish and Wildlife Service and other appropriate agencies and organizations, shall develop a plan for rehabilitation of oil spill damaged wildlife resources. This plan must include:

A. Policies, priorities and guidelines to address rehabilitation activities;

B. An analysis of the cost-effectiveness of wildlife rehabilitation efforts;

C. A mechanism for the use of volunteers, with due regard for their safety;

D. Identification of needed resources and facilities for rehabilitation efforts and an inventory of those available;

E. Preliminary agreements with treatment centers or facilities; and

F. Recommendations on implementation of the plan and any required training efforts.

Sec. 7. 38 MRSA §547, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §113, is further amended by adding after the first paragraph a new paragraph to read:

In the event of an oil spill emergency, the commissioner shall represent the Governor in all direct abatement, clean-up and resource protection activities in coordination with federal, industry and other states' response teams in accordance with Title 37-B, section 742, subsection 3.

Sec. 8. 38 MRSA §551, sub-§1-A is enacted to read:

1-A. Sensitive area data management and mapping. The Legislature may allocate no more than \$350,000 per year of the amount then currently in the fund until fiscal year 1994-95 to mapping, data management and computerization related to the protection of sensitive areas and similar activities required under section 546-B. This limitation does not include personnel costs. The allocations must be made in accordance with section 555. After fiscal year 1993-94, the Legislature must review the need for these activities before allocating additional funds.

Sec. 9. 38 MRSA §551, sub-§4, ¶A, as repealed and replaced by PL 1991, c. 66, Pt. A, §19 and affected by Pt. A, §42, is repealed and the following enacted in its place:

A. License fees are determined on the basis of 4¢ per barrel until July 1, 1994 and 3¢ per barrel after July 1, 1994, of unrefined crude oil and all other refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel, transferred by the licensee during the licensing period and must be paid monthly by the licensee on the basis of records certified to the commissioner. License fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund.

Sec. 10. 38 MRSA §551, sub-§4, ¶D, as repealed and replaced by PL 1991, c. 66, Pt. A, §20 and affected by Pt. A, §42, is repealed and the following enacted in its place:

D. Any person who is required to register with the commissioner pursuant to section 545-B and who first transports oil in Maine shall pay fees that are determined on the basis of 4¢ per barrel until July 1, 1994 and 3¢ per barrel after July 1, 1994, for all refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel, diesel fuel and liquid asphalt transported by the registrant during the period of registration. Fees must be paid monthly by the registrant on the basis of records certified to the commissioner. Fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. The registrant shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the oil transported by the registrant during the period of registration. This paragraph does not apply to waste oil transported into Maine 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 is subject to fees established under section 1319-I.

Sec. 11. 38 MRSA §551, sub-§5, ¶B, as amended by PL 1985, c. 496, Pt. A, §13, is further amended to read:

B. All costs, including without limitation personnel and equipment expenses, involved in the removal of oil, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products covered by this subchapter, including all discharges from interstate pipelines and other discharges prohibited by section 543;

Sec. 12. 38 MRSA §551, sub-§6, as repealed and replaced by PL 1991, c. 66, Pt. A, §21, is repealed and the following enacted in its place:

6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund. For the use of the fund, the commissioner shall seek recovery of all disbursements from the fund for the following purposes, including overdrafts and 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, provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 must be apportioned between the Maine Coastal and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

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

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

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

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

Sec. 13. PL 1985, c. 496, Pt. A, §15 is amended to read:

Sec. 15. Borrowing from the Maine Coastal and Inland Surface Oil Clean-up Fund. To provide for the start-up of the Ground Water Oil Clean-up Fund, subject to the approval of the commissioner, the department may borrow up to \$1,200,000 from the Maine Coastal and Inland Surface Oil Clean-up Fund during fiscal year 1985-86 to be expended for the purposes set forth in the Maine Revised Statutes, Title 38, chapter 3, subchapter II-B. Any money borrowed shall must be

repaid with interest to the Maine Coastal and Inland Surface Oil Clean-up Fund before June 30, 1987, with the exception of \$250,000 in fiscal year ~~1986~~ 1985-86 and \$250,000 in fiscal year 1987 ~~to be borrowed without repayment 1986-87.~~ That \$500,000 must be repaid without interest in 5 annual installments of \$100,000 each, beginning in April 1991. The rate of interest shall ~~must~~ be determined by the Treasurer of State, based on the average rate of interest earned on funds invested during the period of the loan.

Sec. 14. Retroactivity. Those sections of this Act that enact the Maine Revised Statutes, Title 38, section 551, subsection 4, paragraphs A and D are retroactively effective beginning July 1, 1991.

Sec. 15. Allocation. The following funds are allocated from the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out sensitive area data management and mapping. Any unexpended balances of allocations made from this fund on June 30, 1991 may not lapse but must be carried forward through June 30, 1992, to be used for the same purposes.

	1990-91	1991-92	1992-93
ENVIRONMENTAL PROTECTION, DEPARTMENT OF			
Sensitive Area Data Management and Mapping			
Positions		(2.0)	(2.0)
Personal Services		\$134,580	\$146,505
All Other		366,000	366,000
Capital Expenditures	\$60,000	16,300	
Provides funds for an Information Systems Manager position, an ES IV and 2 temporary ES II positions, oil spill response software, geographic information system software and geographic information system equipment. It also includes funds to contract for digitizing sensitive area data.			
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL			
	\$60,000	\$516,880	\$512,505
INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF			
Sensitive Area Data Management and Mapping			
Positions		(1.0)	(1.0)
Personal Services		\$32,774	\$35,673
All Other		19,800	9,800
Capital Expenditures	\$10,135		
Provides funds for a Biologist I position,			

contractual services to develop a wildlife rehabilitation plan, travel expenses, computer maintenance, software license fees and geographic information system equipment.

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE TOTAL	\$10,135	\$52,574	\$45,473
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MARINE RESOURCES, DEPARTMENT OF

Sensitive Area Data Management and Mapping

Positions		(1.0)	(1.0)
Personal Services		\$35,764	\$38,884
All Other		9,800	9,800
Capital Expenditures	\$10,135		

Provides funding for a Marine Scientist II position, travel expenses, computer maintenance, software license fees and geographic information system equipment.

DEPARTMENT OF MARINE RESOURCES TOTAL	\$10,135	\$45,564	\$48,684
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CONSERVATION, DEPARTMENT OF

Maine Geological Survey - Sensitive Area Data Management and Mapping

Capital Expenditures	\$7,000		
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Provides funding for additional computer storage.

Geographic Information System - Sensitive Area Data Management and Mapping

Capital Expenditures	\$9,800	\$9,800	
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Provides funds for additional computer storage.

DEPARTMENT OF CONSERVATION TOTAL	\$16,800	\$9,800	
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TOTAL ALLOCATIONS	\$97,070	\$624,818	\$606,662
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Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 21, 1991.

CHAPTER 455

H.P. 924 - L.D. 1321

An Act to Safeguard Production of Ground Water

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

PART A

Sec. A-1. 5 MRSA §12004-G, sub-§13-B is enacted to read:

<u>13-B.</u>	<u>Maine Water</u>	<u>\$50 Per</u>	<u>32 MRSA</u>
<u>Environment/</u>	<u>Well Drilling</u>	<u>Meeting</u>	<u>§4700-G</u>
<u>Health</u>	<u>Commission</u>	<u>Plus Expenses</u>	
<u>Engineering</u>			

Sec. A-2. 22 MRSA c. 270-C is enacted to read:

CHAPTER 270-C

MAINE WATER WELL DRILLING PROGRAM

§1689. Program established

The Maine Water Well Drilling Program, known in this chapter as "the program," is established to provide the public with the highest quality drinking water possible by ensuring that water wells are drilled, constructed, altered or abandoned in a manner that protects ground water from contamination.

§1689-A. Administrative authority

The Maine Water Well Drilling Commission, as established in Title 5, section 12004-G, subsection 13-B, shall administer the program. The commission has the powers and duties set forth in Title 32, chapter 69-C.

§1689-B. Enforcement

This chapter is enforced by the Department of Human Services, Division of Health Engineering.

PART B

Sec. B-1. 32 MRSA c. 69-C is enacted to read:

CHAPTER 69-C

MAINE WATER WELL DRILLING COMMISSION

§4700-E. Definitions

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