MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION
January 8, 1992 to March 31, 1992

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

A. The authority is strictly liable for any damages up to the level of insurance coverage secured by the authority as required under section 1540, subsection 4 and the level of any self-insurance fund established by the authority under section 1540, subsection 4 on the date of the filing of any action pursuant to section 1540, subsection 1.

B. Siting, design and construction contractors and site operators retained by the authority are liable for their own negligent acts or omissions proximately causing injury or damage to persons or property for damages not satisfied pursuant to paragraph A.

C. Generators or owners of low-level radioactive waste are strictly liable for damages not satisfied pursuant to paragraphs A and B in proportion to the volume and curie content, calculated in the same manner as user fees under section 1536, subsection 2, of the waste shipped to the low-level radioactive waste storage or disposal facility.

D. The authority is strictly liable for damages not satisfied pursuant to paragraphs A to C but only up to the level of the amount recoverable by the authority through supplemental fees under section 1542. The authority is not required to pay any amount under this paragraph until it actually collects that amount through supplemental fees under section 1542.

E. If damages remain unsatisfied after liability is imposed and apportioned under paragraphs A to D, the State accepts liability for any property damage, bodily injury or death resulting from the low-level radioactive waste disposal or storage activities provided in this chapter.

3. Right of contribution. Any person who has been assessed and has paid damages pursuant to subsection 1 or 2 may sue to recover those damages from any person whose negligent act or omission proximately caused those damages. The authority shall pursue any reasonable remedies, considering the cost-effectiveness of pursuing these remedies, that it has against any negligent party to recover damages paid out under subsection 2, paragraph A. All damages recovered under this subsection by the authority must be placed in the self-insurance fund established under section 1540 to the extent that the self-insurance fund was depleted to pay damages under subsection 2, paragraph A. Any further damages recovered by the authority under this subsection may be used to reimburse any commercial insurer of the authority for damages paid by that insurer under subsection 2, paragraph A, to the extent reimbursement is required by the policy of that insurer. All other damages recovered by the authority under this subsection must be placed in the self-insurance fund.

4. Out-of-state disposal. Notwithstanding section 1540, subsection 1, the liability scheme set forth in this chapter does not apply to the disposal of low-level radioactive waste at a facility located outside the State, even if the authority helped to negotiate an agreement or operated as a billing agent for the compact or contract payments.

Sec. 7. 38 MRSA §1542, as enacted by PL 1987, c. 530, §4, is amended to read:

§1542. Supplemental fee

~~Except for costs attributable to negligence by the authority or its contractors, if~~ If the ~~cost~~ costs of post-closure care, authority liability for actual damages under section 1540-A, including a contribution action under section 1540-A, subsection 3, and long-term institutional control, including mitigation of any environmental problems that may develop at the site, ~~exceeds~~ exceed the ~~available~~ funds available to the authority, including enforcement of ~~a~~ an existing judgment, federal assistance and the reserve for unforeseen contingencies provided in sections 1535 and 1536, the authority may assess generators of low-level radioactive waste a supplemental fee to cover ~~that cost~~ those costs, in proportion to the volume and ~~radioactivity of the portion of the waste generated by each generator which remains in the waste stream~~ curie content, calculated in the same manner as user fees under section 1536, subsection 2, of the waste shipped to the low-level radioactive waste storage or disposal facility. In the event that a generator has insufficient assets at that time, the owners of that generator ~~shall be~~ are jointly and severally liable for the supplemental fee of that generator. If any owner pays more than ~~his~~ the owner's proportional share of the costs under this subsection, that owner ~~shall have~~ has a cause of action to recover that excess from other owners who paid less than their share.

See title page for effective date.

CHAPTER 763

S.P. 837 - L.D. 2141

An Act to Amend Maine's Underground Oil Storage Tank Laws

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

Whereas, the orderly management of the State's underground oil storage tanks by the small and independent businesses that own these tanks demands immediate attention prior to the commencement of the construction season; 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-A, sub-§16-A is enacted to read:

16-A. Public drinking water supply. "Public drinking water supply" has the same meaning as "public water system" in Title 22, section 2601, subsection 8. For purposes of defining a sensitive geologic area in this subchapter, an underground oil storage facility's water supply that meets the criteria of Title 22, section 2601, subsection 8 solely because beverages for public sale or consumption are made at that facility is not considered a public drinking water supply.

Sec. 2. 38 MRSA §563-B, sub-§1, as amended by PL 1989, c. 865, §9, is further 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;. The rules:

A. Must allow the facility from which a prohibited discharge has occurred to return to service while corrective action is taken unless the commissioner determines that a return to service would result in a threat to public health and safety;

B. Upon abandonment or replacement of an underground tank or facility, must require site assessment to be conducted or supervised by a state-certified geologist or registered professional engineer only when that tank or facility is located in a sensitive geologic area; and

C. May not require site assessments for a farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for the sole use of the owner or operator of the facility;

Sec. 3. 38 MRSA §563-B, sub-§2, as enacted by PL 1987, c. 491, §10, is amended to read:

2. Inventory analyses; precision testing; leak detection methods. Procedures and methods to be used in conducting statistical inventory analyses, underground oil storage facility precision testing and other leak detection methods;. The rules must allow owners or operators of facilities undergoing routine monitoring in the absence of any other evidence of a leak:

A. To check the accuracy of complete statistical inventory data within 75 days of receipt by the commissioner of the initial statistical analysis by rerunning analyses before inconclusive reports are considered to be a failure of the tank or piping;

B. To check for failures in any mechanical and electronic monitoring devices within 3 working days of an indication of failure before it is considered a failure of the tank or piping;

C. To engage in procedures under paragraphs A and B before requiring the precision testing of facility components; and

D. To check the accuracy of a failed or inconclusive precision test of facility components before the commissioner may order the excavation of the facility or any portion of the facility. An owner or operator is allowed 2 weeks to schedule a repeat of the precision test;

Sec. 4. 38 MRSA §564, sub-§1-B, as enacted by PL 1989, c. 865, §10, is amended to read:

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~~ A phase-in schedule for existing facilities to meet this requirement is as follows.

A. Overfill and spill prevention equipment must be installed in new and replacement underground oil storage tanks at the time the underground oil storage tank is installed.

B. Overfill and spill prevention equipment must be retrofitted on existing tanks constructed of cathodically protected steel, fiberglass or other noncorrosive material approved by the department by December 22, 1998, pursuant to 40 Code of Federal Regulations, 280.20 and 280.21.

Sec. 5. 38 MRSA §564, sub-§2-A, ¶H, as enacted by PL 1991, c. 66, Pt. B, §5, is amended to read:

H. Reporting to the commissioner any of the following indications of a possible leak or discharge of oil:

(1) Unexplained differences in daily inventory reconciliation values that, 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;

(4) Failure of a tank or piping precision test, hydrostatic test or other tank or piping

tightness test approved by the department; and

(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;~~

The rules may not require the reporting of any leak or discharge of oil above ground of 10 gallons or less that occurs on the premises, including, but not limited to, spills, overfills and leaks, when those leaks or discharges do not reach ground water or surface waters of the State and are cleaned up within 24 hours of discovery, provided that a written log is maintained at the facility or the owner's place of business in this State. For each discharge the log must record the date of discovery, its source, the general location of the discharge at the facility, the date and method of cleanup and the signature of the facility owner or operator certifying the accuracy of the log;

Sec. 6. 38 MRSA §566-A, sub-§1-A is enacted to read:

1-A. Abandoned tanks brought back into service. Underground oil storage tanks and facilities that have been out of service for a period of more than 12 months may be brought back into service if the owner can demonstrate to the commissioner's satisfaction that:

A. The facility is in compliance with this subchapter;

B. The underground oil storage tank and piping have successfully passed precision testing; and

C. The underground oil storage tank and piping are constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the commissioner.

Sec. 7. 38 MRSA §568, sub-§6 is enacted to read:

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

Sec. 8. Clean-up standards for remediation. The Commissioner of Environmental Protection shall develop illustrative standards for cleanup and remediation of oil-contaminated soil and ground water to include specific clean-up standards for various contamination scenarios, taking into consideration background levels of contamination. In no case may the most stringent standard exceed:

1. The primary drinking water regulations adopted by the Department of Human Services, Bureau of Health under the Maine Revised Statutes, Title 22, section 2611 or, if no primary drinking water regulations exist, maximum exposure guidelines adopted by the Commissioner of Human Services; or

2. Total gasoline or total heating oil hydrocarbon concentrations in soil exceeding 5 and 10 parts per million respectively.

The Commissioner of Environmental Protection shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by February 15, 1993 on the Department of Environmental Protection's experience in applying these standards.

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

Effective March 30, 1992.

CHAPTER 764

H.P. 1695 - L.D. 2375

An Act Relating to the Arthur R. Gould School

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

Sec. 1. 5 MRSA §12004-I, sub-§15-A is enacted to read:

15-A. Education: Arthur R. Gould School	Policy Review Council	Not Authorized	34-A MRSA §3815

Sec. 2. 34-A MRSA §3815 is enacted to read: