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Constitution of Maine, Article IV, Part First, Section 2; Article IV, Part Second, Section 2; Article IV, Part Third, Section 1-A; and this section. When reapportioning districts, where possible, the Legislative Apportionment Commission shall attempt to form functionally contiguous and compact territories. For purposes of this section, a "functionally contiguous and compact territory" is one that facilitates representation by minimizing impediments to travel within the district. Impediments to travel include, but are not limited to, physical features such as mountains, rivers, oceans and discontinued roads or lack of roads. The commission shall recognize that all political subdivision boundaries are not of equal importance and give weight to the interests of local communities when making district boundary decisions.

When the Supreme Judicial Court is required to make the apportionment, it is bound by this section.

See title page for effective date.

CHAPTER 361

H.P. 978 - L.D. 1387

An Act to Amend the Underground Oil Storage Facilities and Groundwater Protection Laws

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

Sec. 1. 38 MRSA §562-A, sub-§2, as amended by PL 1993, c. 363, §3 and affected by §21, is further amended to read:

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

Sec. 2. 38 MRSA §562-A, sub-§7-A is enacted to read:

7-A. Eligible clean-up costs. "Eligible clean-up costs" means those direct expenses including expenses for site investigation that:

A. Are necessary to clean up discharges of oil to the satisfaction of the commissioner;

B. Are cost-effective and technologically feasible and reliable;

C. Effectively mitigate or minimize damages; and

D. Provide adequate protection of the public health and welfare and the environment.

"Eligible clean-up costs" does not include expenses for legal advice or services.

Sec. 3. 38 MRSA §562-A, sub-§15, as enacted by PL 1989, c. 865, §2, is amended to read:

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 nonhazardous waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

Sec. 4. 38 MRSA §568-A, sub-§1, as amended by PL 1993, c. 363, §§8 and 9 and affected by §21, is further amended to read:

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 180 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 deductible amount specified in subsection 2; ~~and~~

(3) ~~Documentation that the applicant is in substantial~~ For underground storage facilities, documentation regarding the applicant's compliance with the requirements of subsection 2, paragraph B.~~.~~; and

(4) For aboveground facilities, documentation required by the Fund Insurance Review Board.

The commissioner with respect to a claim involving an underground oil storage facility, or the State Fire Marshal with respect to a claim involving an aboveground oil storage facility, may waive the 180-day filing requirement for applicants for coverage of clean-up costs for discharges discovered after April 1, 1990 when the applicant has cooperated in a timely manner with the department in cleaning up the discharge.

~~Within 15 working days of receipt of a request, the commissioner must determine whether the request is complete. If the commissioner determines that the request is incomplete, the com-~~

missioner shall, within the 15 working days inform the applicant of the additional information required to complete the request. Within 90 days of receipt of an applicant's completed request for coverage by the fund submitted pursuant to this paragraph the commissioner must issue an order approving or denying the applicant's request. Failure to issue an order within this period constitutes approval of the applicant's request for coverage by the fund.

When the commissioner determines that a site previously remediated to the commissioner's satisfaction requires further remediation, the owner or operator of the site may apply for coverage of eligible clean up costs and 3rd party damages claims from the fund, notwithstanding the person's failure to meet the 180 day deadline described in this paragraph.

B. An applicant is in substantial compliance when the commissioner finds, considering all the relevant circumstances, including but not limited to all reasons for noncompliance submitted by the applicant pursuant to paragraph A, that the following requirements are substantially 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 requirements in effect at the time of the 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;

(c) Section 564, subsection 2-A, paragraphs B to I, not including paragraph G, and any rules adopted pursuant to that subsection; and

(d) Payment of any fees required under section 569, subsection 4-A, paragraph C;

(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 requirements in effect at the time of the 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 Fund Insurance Review Board as provided in subsection 3-A.

The requirements in subparagraphs (1) to (6) do not apply to owners or operators of aboveground oil storage facilities. The Fund Insurance Review Board shall develop, in consultation with the State Fire Marshal, the documentation requirements for claims submitted by owners of aboveground oil storage facilities.

A finding of lack of substantial compliance does not render an applicant ineligible for coverage by the fund for any future occurrence, if the applicant is in substantial compliance at the time of the future application.

B-1. An applicant is not eligible for coverage for any discharge discovered on or before April 1, 1990.

C. ~~The facility for which the applicant is applying for coverage is not~~ An applicant is not eligible for coverage for any discharge from a facility 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 per facility owner. 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.

F. Within 15 working days of receipt of a request under paragraph A, the commissioner in the case of an underground oil storage facility or the State Fire Marshal in the case of an aboveground oil storage facility shall determine whether the request is complete. Failure to inform the applicant of the determination of completeness within 15 working days constitutes acceptance as complete. If the application is not accepted, the commissioner or State Fire Marshal shall return the application to the applicant with the reasons for nonacceptance specified in writing. Within 90 days of receipt of an applicant's completed request for coverage by the fund submitted pursuant to this subsection, the commissioner or State Fire Marshal shall issue an order determining eligibility and, if the applicant is eligible, specifying the amount of the deductible under subsection 2. Failure to issue an order within this period constitutes a determination that the applicant is eligible, subject to the deductibles in subsection 2, paragraph A.

G. When the commissioner determines that a site previously remediated to the commissioner's satisfaction requires further remediation, the owner or operator of the site may apply for coverage of eligible clean-up costs and 3rd-party damage claims from the fund, notwithstanding the person's failure to meet the 180-day deadline described in paragraph A.

H. The Fund Insurance Review Board shall develop, in consultation with the State Fire Marshal, the documentation requirements for claims submitted under this section by owners of aboveground oil storage facilities.

Sec. 5. 38 MRSA §568-A, sub-§2, as amended by PL 1993, c. 732, Pt. A, §4, is repealed and the following enacted in its place:

2. Deductibles. Except as provided in subsection 2-A, applicants eligible for coverage by the fund under subsection 1 shall pay on a per occurrence basis the applicable standard deductible amount specified in paragraph A. In addition to the applicable standard deductible amount required under paragraph A, the applicant shall pay on a per occurrence basis one or more of the conditional deductible amounts specified in paragraphs B and C to the extent applicable.

A. Standard deductibles are as follows.

(1) For expenses related to a leaking underground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Number of underground storage facilities owned by the facility owner	Deductible
1	$2,500
2 to 5	5,000
6 to 10	10,000
11 to 20	25,000
21 to 30	40,000
over 30	62,500

(2) For expenses related to a leaking aboveground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Total aboveground oil storage capacity in gallons owned by the facility owner	Deductible
Less than 1,320	$500

1,321 to 50,000	2,500
50,001 to 250,000	5,000
250,001 to 500,000	10,000
500,001 to 1,000,000	25,000
1,000,001 to 1,500,000	40,000
greater than 1,500,000	62,500

(3) For facilities with both aboveground and underground tanks when the source of the discharge can not be determined or when the discharge is from both types of tanks, the standard deductible is the applicable amount under subparagraph (1) or (2), whichever is greater.

B. Conditional deductibles for underground facilities and tanks are as follows.

(1) For nonconforming facilities and tanks, the deductible is $10,000 for failure to meet the compliance schedule in section 563-A, 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) For failure to pay registration fees under section 563, subsection 4, the deductible is the total of all past due fees.

(3) For motor fuel storage and marketing and retail facilities, the deductibles are:

(a) Five thousand dollars for failure to comply with applicable design and installation requirements in effect at the time of the installation or retrofitting requirements for leak detection pursuant to section 564, subsections 1 and 1-A;

(b) Five thousand dollars for failure to comply with section 564, subsection 1-B and any rules adopted pursuant to that subsection;

(c) Five thousand dollars for failure to comply with section 564, subsection 2-A, paragraphs B to F and I, and any rules adopted pursuant to that subsection; and

(d) Ten thousand dollars for failure to comply with section 564, subsection 2-A, paragraph H, and any rules adopted pursuant to that subsection.

(4) For consumptive use heating oil facilities with an aggregate storage capacity of less than 2,000 gallons, the deductibles are:

(a) Two thousand dollars for failure to comply with section 565, subsection 1, if applicable;

(b) Two thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and

(c) Two thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(5) For consumptive use heating oil facilities with an aggregate storage capacity of 2,000 gallons or greater, the deductibles are:

(a) Five thousand dollars for failure to comply with section 565, subsection 1, if applicable;

(b) Five thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and

(c) Ten thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(6) For waste oil and heavy oil and airport hydrant facilities with discharges that are not contaminated with hazardous constituents, the deductibles for failure to comply with rules adopted by the board are:

(a) Five thousand dollars for rules regarding design and installation requirements in effect at the time of the installation;

(b) Five thousand dollars for rules regarding retrofitting of leak detection and corrosion protection, if applicable;

(c) Five thousand dollars for rules regarding overfill and spill prevention;

(d) Five thousand dollars for rules regarding the monitoring of cathodic protection systems;

(e) Five thousand dollars for rules regarding testing requirements for tanks and piping on evidence of a leak;

(f) Five thousand dollars for rules regarding maintenance of a leak detection system; and

(g) Ten thousand dollars for rules regarding the reporting of leaks.

C. Conditional deductibles for aboveground facilities and tanks are as follows.

(1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal pursuant to 16-219 CMR, chapter 317, the deductibles are:

(a) Five thousand dollars for failure to obtain a construction permit from the Office of the State Fire Marshal, when required under Title 25, section 2441 and 16-219 CMR, chapter 317;

(b) Five thousand dollars for failure to design and install piping in accordance with section 570-K and rules adopted by the department;

(c) Five thousand dollars for failure to comply with an existing consent decree, court order or outstanding deficiency statement regarding violations at the aboveground facility;

(d) Five thousand dollars for failure to implement a certified spill prevention control and countermeasure plan, if required;

(e) Five thousand dollars for failure to install any required spill control measures, such as dikes;

(f) Five thousand dollars for failure to install any required overfill equipment;

(g) Five thousand dollars if the tank is not approved for aboveground use; and

(h) Ten thousand dollars for failure to report any leaks at the facility as required by law.

(2) For aboveground tanks subject to the jurisdiction of the Oil and Solid Fuel Board, the deductibles are:

(a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Oil and Solid Fuel Board and in effect at the time of installation;

(b) Two hundred and fifty dollars for failure to conform an upgraded facility to the requirements provided in rules of the Oil and Solid Fuel Board;

(c) Two hundred and fifty dollars for failure to make a good faith effort to properly maintain the facility; and

(d) Five hundred dollars for failure to notify the department of a spill.

The commissioner shall make written findings of fact when making a determination of deductible amounts under this subsection. The commissioner's findings may be appealed to the Fund Insurance Review Board, as provided in subsection 3-A. On appeal, the burden of proof is on the commissioner as to which deductibles apply.

After determining the deductible amount to be paid by the applicant, the commissioner shall pay from the fund any additional eligible clean-up costs and 3rd-party damage claims up to $1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek reimbursement from the fund. The commissioner may pay from the fund any eligible costs above $1,000,000, but the commissioner shall recover these expenditures from the responsible party pursuant to section 569-A.

An applicant found ineligible for fund coverage for failure to achieve substantial compliance under former subsection 1, paragraph B or failure to apply within 180 days of reporting the discharge may, on or before July 1, 1996, make a new application for fund coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all applicable deductible amounts in this subsection and the commissioner waives the 180-day filing requirement pursuant to subsection 1.

Sec. 6. 38 MRSA §568-A, sub-§2-A, as enacted by PL 1993, c. 732, Pt. A, §5, is repealed and the following enacted in its place:

2-A. Limit on deductible. The applicant shall pay the total deductible amount or the total eligible clean-up costs and 3rd-party damages, whichever is less.

Sec. 7. 38 MRSA §568-A, sub-§3-A, as enacted by PL 1993, c. 363, §11 and affected by §21, is amended to read:

3-A. Appeals to review board. An applicant aggrieved by an insurance claims-related decision of the commissioner, including but not limited to

decisions on eligibility for coverage, eligibility of costs and waiver and amount of deductible, may appeal that decision to the Fund Insurance Review Board. The public members of the review board shall hear and render a decision on the appeal. Except as provided in review board rules, the appeal must be filed within 30 days after the applicant receives the commissioner's decision on the matter. The appeals panel must hear an appeal at its next meeting following receipt of the appeal, unless the appeals panel and the aggrieved applicant agree to hear the appeal at a different time. If the appeals panel overturns the commissioner's decision, reasonable costs, including reasonable attorney fees, incurred by the aggrieved applicant in pursuing the appeal to the review board must be paid from the fund. Reasonable attorney fees include only those fees incurred from the time of a claims-related decision forward. Decisions of the appeals panel are subject to judicial review pursuant to Title 5, chapter 375, subchapter VII. The review board may adopt rules determining the timing of filing appeals on questions of eligibility of costs for payment by the fund.

See title page for effective date.

CHAPTER 362

S.P. 519 - L.D. 1401

An Act Relating to the Establishment of a Continuum of Quality and Affordable Long-term Care and Service Alternatives

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

Whereas, the development of housing and services for elderly and disabled adults is proceeding at a fast pace and requires standards and consumer protections; and

Whereas, the development of housing and services for elderly and disabled adults requires a revised and stable regulatory scheme for developers; and

Whereas, emergency legislation is necessary to address these situations as quickly 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:

Sec. 1. 22 MRSA §2053, sub-§2-C is enacted to read:

2-C. Congregate housing facility. "Congregate housing facility" means "congregate housing" as defined in section 5152, that has been certified pursuant to section 5154 and has a legally binding contractual arrangement for the provision of health care services with a licensed home health care provider as defined in section 303.

Sec. 2. 22 MRSA §2053, sub-§5, as amended by PL 1993, c. 390, §7, is further amended to read:

5. Participating health care facility. "Participating health care facility" means a health care or congregate housing facility that, pursuant to this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of existing indebtedness as provided in and permitted by this chapter.

Sec. 3. 22 MRSA §5155 is enacted to read:

§5155. Fire safety inspection

1. Inspection required. Certification may not be issued by the department under this chapter to a provider until the department has received from the State Fire Marshal a written statement indicating that the congregate housing facility has complied with applicable fire safety provisions specified in this section. Each facility after receiving its initial inspection and approval from the State Fire Marshal's Office must be reinspected every 2 years in connection with the recertification of the congregate housing facility under the provisions of this chapter.

2. Fees. The department shall establish a fee schedule and pay reasonable fees to the State Fire Marshal for each inspection.

3. Fire safety standards. The applicability of the particular chapter of the National Fire Protection Association Life Safety Code 101, 1994 edition, is determined based upon the following facility sizes.

A. A small facility is a facility occupied by not more than 6 residents.

B. A medium facility is a facility occupied by more than 6 but fewer than 17 residents.

C. A large facility is a facility occupied by more than 17 residents.

4. Small facility. A small facility must meet the rooming and lodging requirements of Chapter 20 of