

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

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

Augusta, Maine
2011

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

Effective June 7, 2011.

CHAPTER 243

H.P. 501 - L.D. 671

**An Act To Amend the Laws
Governing the Ground Water
Oil Clean-up Fund**

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

Sec. 1. 38 MRSA §568-A, sub-§2, as amended by PL 2009, c. 501, §9, is further amended to read:

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 calculated under this paragraph based on the number of underground storage facilities or the capacity of gallons owned by the aboveground storage facility owner at the time the covered discharge is discovered. 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 34, 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, chapter 318 and 16-219 CMR, chapter 34 or under prior applicable law;
- (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.

(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 comply with the 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 section 568-B, subsection ~~3-A~~ 2-C. 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. 2. 38 MRSA §568-A, sub-§3-A, as amended by PL 1995, c. 361, §7, is repealed.

Sec. 3. 38 MRSA §568-B, as amended by PL 2009, c. 319, §13, is further amended to read:

§568-B. Fund Insurance Review Board created

1. Fund Insurance Review Board. The Fund Insurance Review Board, as established by Title 5, section 12004-G, subsection 11-A, is created ~~for the purposes of hearing and deciding to hear and decide appeals from insurance claims-related decisions of the commissioner as well as adopting rules and guidelines necessary to the furtherance of its duties and responsibilities under this subchapter under section 568-A and monitor income and disbursements from the Ground Water Oil Clean-up Fund under section 569-A.~~ The review board consists of 10 members appointed for 3-year terms as follows:

A. ~~Three~~ Two persons representing the petroleum industry, appointed by the Governor, one of whom is ~~nominated by the Maine Oil Dealers Association, one of whom is a retailer who owns fewer than 5 retail outlets, as defined in Title 10, section 1672, subsection 6, and one of whom is a retailer who owns 5 or more retail outlets, as defined in Title 10, section 1672 a representative of a statewide association of energy dealers;~~

A-1. Two persons, appointed by the Governor, who have expertise in oil storage facility design

and installation, oil spill remediation or environmental engineering;

B. ~~Five~~ Four members of the public ~~who are not employed in the petroleum industry and who do not, appointed by the Governor, 2 of whom have expertise in biological science, earth science, engineering, insurance or law. The 4 members may not be employed in or have a direct and substantial financial interest in the petroleum industry to be appointed by the Governor;~~

C. The commissioner or the commissioner's designee; and

D. The State Fire Marshal or the fire marshal's designee.

Members described in paragraphs A, ~~A-1~~ and B are entitled to reimbursement for direct expenses of attendance at meetings of the review board or the appeals panel.

2. Powers and duties of review board. The Fund Insurance Review Board has the following powers and duties:

A. To hear appeals from insurance claims-related decisions of the commissioner ~~pursuant to and the State Fire Marshal under section 568-A, subsection 3-A;~~

B. To adopt rules in accordance with Title 5, chapter 375, subchapter ~~H establishing criteria for determining substantial compliance for above-ground oil storage facilities~~ 2 and guidelines necessary for the furtherance of the review board's duties and responsibilities under this subchapter;

C. To contract with the Finance Authority of Maine for such assistance in fulfilling the review board's duties as the review board may require;

D. To monitor income and disbursements from the Ground Water Oil Clean-up Fund under section 569-A and adjust fees pursuant to section 569-A, subsection 5, paragraph E, as required to avoid a shortfall in the fund; ~~and~~

E. To consult with the Finance Authority of Maine at such times as are necessary, but no less than annually, to review income and disbursements from the Waste Oil Clean-up Fund under Title 10, section 1023-L. The review board, at such times and in such amounts as it determines necessary, and in consultation with the Finance Authority of Maine, shall direct the transfer of funds from the Underground Oil Storage Replacement Fund to the ~~Groundwater~~ Ground Water Oil Clean-up Fund; ~~and~~

F. To review department priorities for disbursements from the Ground Water Oil Clean-up Fund and make recommendations to the commissioner on how the fund should be allocated.

2-A. Meetings. The Fund Insurance Review Board shall meet 6 times per year unless the review board votes not to hold a meeting. Action may not be taken unless a quorum is present. A quorum is 6 members.

2-B. Chair. The review board shall annually choose a member to serve as chair of the review board.

2-C. Appeals to review board. An applicant aggrieved by an insurance claims-related decision under section 568-A, 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 appeals panel is composed of the public members appointed under subsection 1, paragraph B. The appeals panel shall hear and decide the appeal. Except as provided in review board rules, the appeal must be filed within 30 days after the applicant receives the decision made under section 568-A. The appeals panel must hear an appeal at its next meeting following receipt of the appeal unless the appeal petition is received less than 30 days before the meeting or unless the appeals panel and the aggrieved applicant agree to meet at a different time. If the appeals panel overturns the decision made under section 568-A, reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant in pursuing the appeal to the review board must be paid from the fund. Reasonable attorney's fees include only those fees incurred from the time of an insurance claims-related decision forward. Decisions of the appeals panel are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7.

2-D. Report; adequacy of fund. On or before February 15th of each year, the Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the department's and the review board's experience administering the Ground Water Oil Clean-up Fund, clean-up activities and 3rd-party damage claims. The report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report also must include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this subsection, the review board may order an independent audit of disbursements from the Ground Water Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund.

3. Repeal date. This section is repealed December 31, 2015.

Sec. 4. 38 MRSA §570-H, as amended by PL 2007, c. 292, §37, is repealed.

Sec. 5. Transition provision. Members of the Fund Insurance Review Board created under the Maine Revised Statutes, Title 38, section 568-B, subsection 1 serving on the effective date of this Act may continue to serve on the board for the remainder of their terms. When the term of a member expires, that member's successor is appointed in accordance with this Act. At no time may fewer than 4 public members be appointed.

See title page for effective date.

CHAPTER 244

H.P. 837 - L.D. 1125

An Act To Implement the Recommendations of the Joint Standing Committee on State and Local Government To Make Necessary Changes to the Maine Administrative Procedure Act

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

Sec. 1. 5 MRSA §8054, sub-§2, as amended by PL 2007, c. 581, §4, is further amended to read:

2. Agency findings. Any emergency rule must include, with specificity, the agency's findings with respect to the existence of an emergency, including any modifications of procedures, and such findings are subject to judicial review under section 8058. Such findings must be included in the basis statement for any adopted emergency rule in a section labeled "findings of emergency." No emergency may be found to exist when the primary cause of the emergency is delay caused by the agency involved.

Sec. 2. 5 MRSA §8054, sub-§4 is enacted to read:

4. Fiscal impact; curtailment orders. An emergency rule adopted in whole or in part to satisfy the requirements of a temporary curtailment order by the Governor under section 1668 must include a specification of the dollar amount of curtailed funds attributable to each change adopted in the rule.

Sec. 3. 5 MRSA §8071-A is enacted to read:

§8071-A. Definitions

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

1. Legislative review session. "Legislative review session" means the regular session of the Legislature convening after the beginning of the legislative rule acceptance period.