

## 38 §568. CLEANUP AND REMOVAL OF PROHIBITED DISCHARGES

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**1. Removal.** Any person discharging or suffering a discharge of oil from an underground oil storage facility or an aboveground oil storage facility in the manner prohibited by section 543 and any other responsible party shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding this requirement, the commissioner may order the removal of that discharge pursuant to subsection 3 or may undertake the removal of that discharge and retain agents and contractors for that purpose, who shall operate under the direction of the commissioner. Any unexplained discharge of oil within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting the discharge, the commissioner or 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 must be collected in accordance with section 569-A or 569-B.

[ 2009, c. 121, §12 (AMD) . ]

**2. Restoration of water supplies.** The 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 with alternatives the commissioner finds are cost effective, technologically feasible and reliable and that effectively mitigate or minimize damage to and provide adequate protection of the public health, welfare and the environment. When the remedial action taken includes the installation of a public water supply or the extension of mains of an existing utility, the department's obligation is limited to construction of those works that are necessary to furnish the contaminated or potentially contaminated properties with a supply of water sufficient for existing uses. The department is not obligated to contribute to a utility's system development charge or to provide works or water sources exceeding those required to abate the threats or hazards posed by the discharge. The fund may be used to pay costs of operation, maintenance and depreciation of the works or water supply for a period not exceeding 20 years. The commissioner shall consult with the affected party prior to selecting the alternative to be implemented.

[ 1991, c. 494, §8 (AMD) . ]

**2-A. Limitation on clean-up responsibility.** Notwithstanding subsections 1 and 2, if a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

A. Neither the commissioner nor the responsible party is obligated under this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as described in section 548, subsection 1; and [1993, c. 621, §3 (NEW) . ]

B. The obligation under this subchapter of the commissioner or any responsible party with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in an area other than one described in paragraph A. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well. [1993, c. 621, §3 (NEW) . ]

For purposes of this subsection, "viable community public water system" has the same meaning as in section 548.

[ 1993, c. 621, §3 (NEW) . ]

**3. Issuance of clean-up orders.** The 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 that relate or may relate to the discharge under investigation from any person who the commissioner has reason to believe may be a responsible party under this subchapter or subchapter 2-A. If the 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 and 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, including an action to prohibit product delivery under section 565-A, 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, to compensate 3rd-party damages resulting from the discharge and to impose restrictions by deed covenant or other means on the use of the real property where the discharge occurred. 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 with water supplies the commissioner finds are cost effective, technologically feasible and reliable and that effectively mitigate or minimize damage to, and provide adequate protection of, the public health, welfare and the environment. Clean-up orders may be issued only in compliance with the following procedures.

A. Any orders issued under this section 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. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §22 (AMD).]

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. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing is an appeal. At the hearing, all witnesses must be sworn and the 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 then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §22 (AMD).]

C. Upon completion of the clean-up activity, the commissioner shall issue a letter to the responsible party or parties indicating that the clean-up order has been complied with for one or more parcels. [1991, c. 433, §2 (NEW).]

[2009, c. 319, §8 (AMD).]

**4. Enforcement; penalties; punitive damages.** Enforcement, penalties and punitive damages are as follows.

A. Any person who causes, or is responsible for, a discharge from an underground oil storage facility or an aboveground oil storage facility in violation of section 543 is not 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 commissioner and the board. [2009, c. 121, §13 (AMD).]

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 failure to take prompt action. [1991, c. 66, Pt. A, §28 (RPR).]

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. [1991, c. 66, Pt. A, §28 (RPR).]

[ 2009, c. 121, §13 (AMD) .]

### **5. Acquisition of property; authority.**

[ 1991, c. 66, Pt. A, §28 (RP) .]

**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; [1991, c. 66, Pt. A, §28 (RPR).]

B. Actions to clean up and remove oil from the site; and [1991, c. 66, Pt. A, §28 (RPR) .]

C. Replacement of water supplies contaminated by or at significant risk of contamination by a discharge of oil. [1991, c. 66, Pt. A, §28 (RPR).]

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.

[ 1991, c. 66, Pt. A, §28 (RPR) .]

**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.

[ 1991, c. 763, §7 (NEW) .]

#### SECTION HISTORY

1985, c. 496, §A14 (NEW). 1987, c. 556, (AMD). 1987, c. 735, §71 (AMD). 1987, c. 787, §14 (AMD). 1987, c. 491, §15 (RPR). 1989, c. 865, §14 (AMD). 1989, c. 890, §§A40,B146 (AMD). 1991, c. 433, §2 (AMD). 1991, c. 494, §§8,9 (AMD). 1991, c. 763, §7 (AMD). 1991, c. 817, §22 (AMD). 1991, c. 66, §A28 (RPR). 1993, c. 621, §3 (AMD). 2005, c. 330, §22 (AMD). 2007, c. 534, §4 (AMD). 2007, c. 655, §6 (AMD). 2009, c. 121, §§12, 13 (AMD). 2009, c. 319, §8 (AMD).

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