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Public Law
124th Legislature
First Regular Session

Chapter 319
H.P. 936 - L.D. 1332

**An Act To Continue Coverage of Oil Clean-up Costs and
Improve Administration of the Ground Water Oil Clean-up Fund**

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

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

1-A. Aboveground oil storage facility. "Aboveground oil storage facility" also referred to as a "facility" means any aboveground oil storage tank or tanks, together with associated piping, transfer and dispensing facilities located over land or water of the State at a single location for more than 4 months per year and used or intended to be used for the storage or supply of oil. Oil terminal facilities, as defined in section 542, subsection 7 and propane facilities are not included in this definition and are not eligible for coverage by the fund.

Sec. 2. 38 MRSA §562-A, sub-§15-A is enacted to read:

15-A. Oil storage facility or facility. "Oil storage facility" or "facility" means an aboveground oil storage facility or an underground oil storage facility.

Sec. 3. 38 MRSA §562-A, sub-§15-B is enacted to read:

15-B. Operator. "Operator" means a person in control of, or having responsibility for, the daily operation of an oil storage facility.

Sec. 4. 38 MRSA §562-A, sub-§21, as enacted by PL 1989, c. 865, §2, is amended to read:

21. Underground oil storage facility. "Underground oil storage facility;" also referred to as "facility," means any underground oil storage tank or tanks, as defined in subsection 22, together with associated piping and dispensing facilities located under any land at a single location and used, or intended to be used, for the storage or supply of oil, as defined in this subchapter. Underground oil storage facility also includes piping located under any land at a single location associated with above ground storage tanks and containing 10% or more of the facility's overall volume capacity.

Sec. 5. 38 MRSA §564, sub-§2-A, ¶J, as amended by PL 1991, c. 494, §5, is further amended to read:

J. Owners and operators, upon request by the commissioner, to sample their underground oil tanks, to maintain records of all monitoring and sampling results at the facility or the facility owner's place of business and to furnish records of all monitoring and sampling results to the commissioner and to permit the commissioner or the commissioner's representative to inspect and copy those records; ~~and~~

Sec. 6. 38 MRSA §564, sub-§2-A, ¶K, as enacted by PL 1991, c. 66, Pt. B, §5, is amended to read:

K. Owners and operators to permit the commissioner or the commissioner's designated representatives, including contractors, access to all underground oil storage facilities for all purposes connected with administering this subchapter, including, but not limited to, for sampling the contents of underground oil tanks and monitoring wells. This right of access is ~~to be~~ in addition to any other granted by law: ; and

Sec. 7. 38 MRSA §564, sub-§2-A, ¶L is enacted to read:

L. Operators to complete a department training program that meets the minimum requirements specified by the United States Environmental Protection Agency under 42 United States Code, Section 6991i (2007).

Sec. 8. 38 MRSA §568, sub-§3, as amended by PL 2007, c. 534, §4, is further amended to read:

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 ~~and~~ , 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.

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.

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.

Sec. 9. 38 MRSA §568-A, sub-§1, ¶F, as enacted by PL 1995, c. 361, §4, is amended to read:

~~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.~~

Sec. 10. 38 MRSA §568-A, sub-§1, ¶F-1 is enacted to read:

F-1. 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. An order issued under this paragraph may be conditioned on any reasonable terms determined necessary by the commissioner or State Fire Marshal to prevent or limit human exposure to contamination from the discharge, including a requirement that the applicant impose restrictions by deed covenant or other means on the use of the real property where the discharge occurred.

Sec. 11. 38 MRSA §568-A, sub-§1, ¶L is enacted to read:

L. An applicant is not eligible for coverage under this section if the applicant is a motor carrier under the Motor Carrier Act, 49 United States Code, Section 31139 and the discharge for which coverage is sought occurred during the offloading or unloading of oil from or to a motor vehicle used to transport oil.

Sec. 12. 38 MRSA §568-A, sub-§7, as amended by PL 2003, c. 245, §10, is further amended to read:

7. Repeal date. This section is repealed December 31, ~~2010~~ 2015.

Sec. 13. 38 MRSA §568-B, sub-§3, as enacted by PL 2003, c. 245, §11, is amended to read:

3. Repeal date. This section is repealed December 31, ~~2010~~ 2015.

Sec. 14. 38 MRSA §569-A, sub-§13, as amended by PL 2003, c. 245, §13, is further amended to read:

13. Repeal date. This section is repealed December 31, ~~2010~~ 2015.

Sec. 15. 38 MRSA §569-B, sub-§8, as amended by PL 2003, c. 245, §14, is further amended to read:

8. Effective date. This section takes effect December 31, ~~2010~~ 2015.

Sec. 16. 38 MRSA §570, first ¶, as affected by PL 2003, c. 245, §§20 and 21 and amended by PL 2007, c. 292, §§35 and 36, is repealed and the following enacted in its place:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-A, subsection 8, paragraphs B, D, E, H and J, or other damage incurred by the State, except for costs found by the commissioner to be eligible for coverage under section 568-A. The term "other damages," as used in this paragraph, includes interest computed at 15% a year from the date of expenditure and damage for injury to, destruction of, loss of or loss of use of natural resources, the reasonable costs of assessing natural resources damage and the costs of preparing and implementing a natural resources restoration plan. The commissioner shall demand reimbursement of costs and damages paid by the department from state or federal funds as provided under section 569-A, subsection 10 except for amounts that are eligible for coverage by the fund under this subchapter. Payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court or the department may file suit in District Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. This paragraph is repealed December 31, 2015.

Sec. 17. 38 MRSA §570, as affected by PL 2003, c. 245, §§20 and 21 and amended by PL 2007, c. 292, §§35 and 36, is further amended by adding after the first paragraph a new paragraph to read:

This paragraph takes effect December 31, 2015. The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-B, subsection 5, paragraphs B, D, E and G or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and payment of damages paid by the department from state or federal funds to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior

Court or the department may file suit in District Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 18. 38 MRSA §570-A, last ¶, as amended by PL 2003, c. 245, §15, is further amended to read:

This section is repealed December 31, ~~2010~~ 2015.

Sec. 19. 38 MRSA §570-B, last ¶, as amended by PL 2003, c. 245, §16, is further amended to read:

This section is repealed December 31, ~~2010~~ 2015.

Sec. 20. 38 MRSA §570-I, last ¶, as amended by PL 2003, c. 245, §17, is further amended to read:

This section takes effect December 31, ~~2010~~ 2015.

Sec. 21. 38 MRSA §570-J, last ¶, as amended by PL 2003, c. 245, §18, is further amended to read:

This section is effective December 31, ~~2010~~ 2015.

Sec. 22. PL 1991, c. 817, §28, as amended by PL 2003, c. 245, §20, is repealed.

Sec. 28. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as repealed and replaced by Public Law 1987, chapter 735, section 72, takes effect December 31, 2010.

Sec. 23. PL 1991, c. 817, §30, as amended by PL 2003, c. 245, §21, is repealed.

Sec. 30. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as amended by Public Law 1989, chapter 865, section 17 and affected by sections 24 and 25, is repealed December 31, 2010.

Sec. 24. Review and evaluation. The Department of Environmental Protection, in consultation with interested parties, shall review and evaluate the current framework for funding investigations and the cleanup of tank-related oil discharges at voluntary response action program sites under the Maine Revised Statutes, Title 38, section 343-E and sites contaminated by discharges during the delivery of oil to an oil storage facility. The department shall make recommendations for sustainable public or private funding of the investigation and cleanup of those sites. By January 15, 2010, the department shall submit to the Joint Standing Committee on Natural Resources a report detailing its findings and recommendations, and the committee may report out legislation to the Second Regular Session of the 124th Legislature relating to the report.

Sec. 25. Appropriations and allocations. The following appropriations and allocations are made.

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Remediation and Waste Management 0247

Initiative: Deallocates funds as a result of limiting eligibility for coverage and modifying other activities to reduce expenditures from the Ground Water Oil Clean-up Fund.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	(\$500,000)	(\$500,000)
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$500,000)	(\$500,000)

Effective September 12, 2009