

§568-A. Fund coverage requirements

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;
- (3) 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 Clean-up and Response Fund 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. [PL 2015, c. 319, §25 (AMD).]

B. [PL 1995, c. 361, §4 (RP).]

B-1. An applicant is not eligible for coverage for any discharge discovered on or before April 1, 1990. [PL 1995, c. 361, §4 (NEW).]

B-2. An applicant is not eligible for coverage for any discharge discovered or reported to the commissioner after October 1, 1998 if the discharge is from an underground oil storage facility or tank that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department or from an aboveground oil storage facility that has underground piping that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department. This exclusion from coverage does not apply to a discharge from an aboveground oil storage facility if the facility is used exclusively to store home heating oil, consists of tanks with a capacity of 660 gallons or less and has an aggregate tank capacity of 1,320 gallons or less. [PL 2011, c. 206, §16 (AMD).]

C. An applicant is not eligible for coverage for any discharge from a facility owned or operated by the Federal Government. [PL 1995, c. 361, §4 (AMD).]

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. [PL 1991, c. 494, §11 (AMD).]

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 for discharges discovered after September 30, 2001 or 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. [PL 2001, c. 216, §1 (AMD).]

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. [PL 2009, c. 319, §9 (AMD).]

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. [PL 2009, c. 319, §10 (NEW).]

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. [PL 1995, c. 361, §4 (NEW).]

H. The Clean-up and Response Fund 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. [PL 2015, c. 319, §26 (AMD).]

I. An applicant is not eligible for coverage of costs recovered by settlement with or judgment against another responsible party, the responsible party's representative or the applicant's insurer. Applicants who recover costs by such a settlement or judgment shall reimburse the fund to the extent the amount recovered duplicates payments from the fund. [PL 1999, c. 278, §1 (NEW).]

J. An applicant is not eligible for coverage for any underground oil storage facility installed in violation of the provisions of chapter 13-D. [PL 2007, c. 569, §4 (AMD).]

K. An applicant whose facility is subject to the provisions of chapter 13-D is not eligible for coverage for costs related to providing treatment or temporary or permanent water supply replacement and 3rd-party damage claim costs related to an oil discharge at a facility installed after September 30, 2001 and affecting that property's drinking water supply system. [PL 2007, c. 569, §5 (AMD).]

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. [PL 2009, c. 319, §11 (NEW).]
[PL 2015, c. 319, §§25, 26 (AMD).]

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.

(4) For aboveground tanks regulated by the Maine Fuel Board with less than 300 gallons' storage capacity, the standard deductible may be waived by the commissioner upon submission of documentation of a passing ultrasonic thickness test of the tank conducted within 12 months prior to the discharge. [PL 2015, c. 319, §27 (AMD).]

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. [PL 1995, c. 361, §5 (NEW).]

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 Maine Fuel Board, the deductibles are:
- (a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Maine 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 Maine 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. [PL 2013, c. 300, §11 (AMD).]

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 Clean-up and Response Fund Review Board, as provided in section 568-B, subsection 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 for underground oil storage facilities and up to \$750,000 for all other occurrences associated with activities under section 551, subsection 5, paragraphs B, D and K. 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 for underground oil storage facilities and above \$750,000 for all other occurrences, but the commissioner shall recover these expenditures from the responsible party pursuant to section 551.

[PL 2015, c. 319, §27 (AMD).]

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.

[PL 1995, c. 361, §6 (RPR).]

2-B. Failure to pay deductibles. An order issued under subsection 1, paragraph F-1 may be conditioned on payment of the applicable deductibles. If an applicant fails to pay the deductible amounts as determined under subsection 2 within 180 days of receipt of a bill from the department or within 180 days of a decision by the review board or an appellate court upholding the determination, whichever is later, the commissioner may seek reimbursement from the applicant or any other responsible party of all costs incurred by the State in the removal, abatement and remediation of the discharge for which coverage was sought.

[PL 2011, c. 206, §17 (NEW).]

3. Exemptions from deductible. The commissioner may waive the deductible requirement for an applicant's personal residence if the commissioner determines that the applicant does not have the

financial resources to pay the deductible. The department shall adopt rules to determine the standards to be used to assess an applicant's ability to pay this deductible.

[PL 2019, c. 315, §11 (AMD).]

3-A. Appeals to review board.

[PL 2011, c. 243, §2 (RP).]

4. Agreements. Any payments to or on behalf of applicants for clean-up activities undertaken by the applicant must be pursuant to a written agreement between the applicant and the commissioner. The agreement must include, but is not limited to:

A. A plan and schedule for remedial actions; [PL 1989, c. 865, §15 (NEW); PL 1989, c. 865, §§24, 25 (AFF).]

B. A provision for enforcement of the agreement and sanctions for nonperformance; [PL 1989, c. 865, §15 (NEW); PL 1989, c. 865, §§24, 25 (AFF).]

C. Provisions for cost accounting and reporting of costs incurred in remediation activities; and [PL 1989, c. 865, §15 (NEW); PL 1989, c. 865, §§24, 25 (AFF).]

D. An agreement to clean up the site to the satisfaction of the commissioner. [PL 1989, c. 865, §15 (NEW); PL 1989, c. 865, §§24, 25 (AFF).]

[PL 1989, c. 865, §15 (NEW); PL 1989, c. 865, §§24, 25 (AFF).]

5. Uncompensated 3rd-party damage claims.

[PL 1993, c. 355, §15 (RP).]

6. Reimbursement of 3rd-party damages paid. If a person claiming to have suffered property damage or actual economic damage directly or indirectly as a result of a discharge of oil to groundwater prohibited by section 543 files a claim for damages against the owner or operator of an underground or aboveground oil storage tank in a court of competent jurisdiction without simultaneously filing or previously having filed a 3rd-party damage claim pursuant to section 551, the owner or operator may file a claim with the commissioner to be reimbursed for damages paid or payable to that 3rd party under a settlement or judgment. Such a claim for reimbursement must be filed and processed as follows.

A. The claim for reimbursement must be filed with the commissioner. If the owner or operator has not previously filed an application for fund coverage pursuant to subsection 1, the person claiming reimbursement shall also make application. The application must comply with the requirements of subsection 1 and must be processed and judged by the standards set forth in that subsection except that it is not required to be filed within 180 days of reporting the discharge. [PL 1993, c. 553, §1 (NEW); PL 1993, c. 553, §7 (AFF).]

B. If the person is eligible for fund coverage, the commissioner shall calculate the amount of reimbursement to the owner or operator by determining whether each amount claimed would be eligible for payment had the 3rd party applied directly to the fund. Eligible amounts, minus any deductible that has not previously been met by the owner or operator, must be paid to that owner or operator. [PL 1993, c. 553, §1 (NEW); PL 1993, c. 553, §7 (AFF).]

C. Appeals of decisions made under this subsection may be made to the Clean-up and Response Fund Review Board. [PL 2015, c. 319, §28 (AMD).]

[PL 2015, c. 319, §28 (AMD).]

7. Repeal date.

[PL 2015, c. 319, §29 (RP).]

SECTION HISTORY

PL 1989, c. 865, §§15,24,25 (NEW). PL 1991, c. 433, §3 (AMD). PL 1991, c. 433, §7 (AFF). PL 1991, c. 494, §§10-12 (AMD). PL 1991, c. 817, §§23,24 (AMD). PL 1993, c. 355, §15

(AMD). PL 1993, c. 363, §§8-11 (AMD). PL 1993, c. 363, §21 (AFF). PL 1993, c. 553, §1 (AMD). PL 1993, c. 553, §7 (AFF). PL 1993, c. 732, §§A4,5 (AMD). PL 1995, c. 361, §§4-7 (AMD). PL 1997, c. 374, §§4,5 (AMD). PL 1997, c. 374, §14 (AFF). PL 1999, c. 278, §1 (AMD). PL 1999, c. 504, §11 (AMD). PL 1999, c. 531, §A1 (AMD). PL 1999, c. 531, §A2 (AFF). PL 1999, c. 652, §11 (AMD). PL 2001, c. 216, §§1,2 (AMD). PL 2001, c. 302, §2 (AMD). PL 2003, c. 245, §10 (AMD). PL 2005, c. 330, §21 (AMD). PL 2007, c. 569, §§4, 5 (AMD). PL 2009, c. 319, §§9-12 (AMD). PL 2009, c. 501, §9 (AMD). PL 2011, c. 206, §§16, 17 (AMD). PL 2011, c. 243, §§1, 2 (AMD). PL 2013, c. 300, §11 (AMD). PL 2015, c. 319, §§25-29 (AMD). PL 2017, c. 137, Pt. A, §13 (AMD). PL 2019, c. 315, §11 (AMD).

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