An Act To Amend Laws Administered by the Department of Environmental Protection

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

Sec. 1. 23 MRSA §3105, as repealed and replaced by PL 2009, c. 239, §4, is repealed.

Sec. 2. 23 MRSA §3105-A is enacted to read:

§ 3105-A. Use of town equipment

The inhabitants of any town or village corporation at a legal town or village corporation meeting may authorize the municipal officers of the town or assessors of the village corporation to use its highway equipment on private ways within such town or village corporation whenever such municipal officers or assessors consider it advisable in the best interest of the town or village corporation for fire and police protection.

Sec. 3. 23 MRSA §3106, sub-§1, as enacted by PL 2009, c. 225, §1, is amended to read:

1. Repairs to a private road. ~~A municipality may~~For the purpose of protecting or restoring a great pond, as defined in Title 38, section 480-B, subsection 5, a municipality may appropriate funds to repair a private road, way or bridge to prevent storm water runoff pollution from reaching a great pond ~~as defined in Title 38, section 480-B, subsection 5 through the expenditure of public funds~~ if:

A. The private road, way or bridge is within the watershed of the great pond;

B. The great pond:

(1) Is listed on the Department of Environmental Protection's list of bodies of water most at risk pursuant to Title 38, section 420-D, subsection 3;

(2) Has been listed as impaired in an integrated water quality monitoring and assessment report submitted by the Department of Environmental Protection to the United States Environmental Protection Agency pursuant to the federal Clean Water Act, 33 United States Code, Section 1315(b) at least once since 2002; or

(3) Is identified as having threats to water quality in a completed watershed survey that uses a protocol accepted by the Department of Environmental Protection;

C. The Department of Environmental Protection or the municipality determines that the private road, way or bridge is contributing to the degradation of the water quality of the great pond based upon an evaluation of the road, way or bridge using a protocol accepted by the department;

D. The repair complies with best management practices required by the Department of Environmental Protection; and

E. The private road, way or bridge is maintained by a road association organized under this subchapter or Title 13-B.

Sec. 4. 38 MRSA §548, first ¶, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §114, is further amended to read:

Any person discharging or suffering the discharge of oil in the manner prohibited by section 543 shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding the above requirement, the commissioner may undertake the removal or cleanup of that discharge and may retain agents and contractors for those purposes who shall operate under the direction of the commissioner. The commissioner may implement remedies to restore or replace water supplies contaminated by a discharge of oil prohibited by section 543, including all discharges from interstate pipelines, using the most cost-effective alternative that is technologically feasible and reliable and ~~which~~that effectively mitigates or minimizes damages to, and provides adequate protection of, the public health, welfare and the environment. 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. If the commissioner finds, after investigation, that a discharge of oil has occurred and may create a threat to public health or the environment, the commissioner may issue a clean-up order in accordance with section 568, subsection 3.

Sec. 5. 38 MRSA §551, sub-§5, ¶E, as amended by PL 1985, c. 496, Pt. A, §13, is further amended to read:

E. Payment of costs of ~~arbitration and arbitrators~~hearings, independent hearing examiners and independent claims adjusters for 3rd-party damage claims;

Sec. 6. 38 MRSA §551, sub-§6-A, as enacted by PL 1997, c. 364, §28, is amended to read:

6-A. Lien. All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil and interest are a lien against the real estate of the responsible party. The lien does not apply to the real estate of a licensee if the discharge was caused or suffered by a carrier destined for the licensee's facilities.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

Sec. 7. 38 MRSA §566-A, sub-§1, as enacted by PL 1987, c. 491, §14, is amended to read:

1. Abandonment. All underground oil storage facilities and tanks that have been, or are intended to be, taken out of service for a period of more than 12 months ~~shall~~must be properly abandoned by the owner or operator of the facility or tank or, if the owner or operator is unknown, dissolved or insolvent, by the current owner of the property where the facility or tank is located. All abandoned facilities and tanks ~~shall~~must be removed, except where removal is not physically possible or practicable because the tank or other component of the facility to be removed is:

A. Located beneath a building or other permanent structure;

B. Of a size and type of construction that it cannot be removed;

C. Otherwise inaccessible to heavy equipment necessary for removal; or

D. Positioned in such a manner that removal will endanger the structural integrity of nearby tanks.

Sec. 8. 38 MRSA §566-A, sub-§1-A, as amended by PL 2007, c. 655, §5, is further amended to read:

1-A. Abandoned tanks brought back into service. Underground oil storage tanks and facilities that have been out of service for a period of more than 12 months may not be brought back into service without the written approval of the commissioner. The commissioner may approve the return to service if the owner demonstrates to the commissioner's satisfaction that:

A. The facility is in compliance with this subchapter and rules adopted pursuant to this subchapter;

B. The underground oil storage ~~tank~~tanks and piping have successfully passed testing as directed by the commissioner;

C. The underground oil storage ~~tank~~tanks and piping are constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the commissioner;

D. The facility has conforming suction or double-walled pressurized piping; and

E. The return of the facility to service does not pose an unacceptable risk to groundwater resources. In determining if the facility poses an unacceptable risk to groundwater resources, the commissioner may consider the age and maintenance history of the storage tanks and piping, the number and consequences of past oil discharges from the tanks and piping, the proximity of the facility to drinking water supplies and the proximity of the facility to sensitive geologic areas.

The commissioner may not approve the return to service of a single-walled underground oil storage tank that has been out of service for more than 12 consecutive months.

Sec. 9. 38 MRSA §568-A, sub-§2, ¶C, as amended by PL 2005, c. 330, §21, is further amended to read:

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 ~~conform an upgraded facility to the requirements provided in~~ 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.

Sec. 10. 38 MRSA §569-A, sub-§8, ¶B, as amended by PL 1995, c. 399, §14 and affected by §21, is further amended to read:

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures, including restoration of water supplies, related to the discharge of oil ~~to ground water, whether~~ from an ~~aboveground or underground~~oil storage facility~~,~~ not paid by a responsible party or an applicant for coverage by the fund;

Sec. 11. 38 MRSA §569-A, sub-§10-A, as amended by PL 1999, c. 334, §4, is further amended to read:

10-A. Lien. All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil from an ~~aboveground or underground~~oil storage facility and all costs incurred by the State in the abandonment of an underground oil storage facility or tank under section 566-A, subsection 4 and interest are a lien against the real estate of the responsible party. For a responsible party determined eligible for coverage under section 568-A, subsection 1, the lien is for the amount of any unpaid deductible assigned under section 568-A, subsection 2 ~~or for~~and any eligible clean-up costs and 3rd-party damage claims above $1,000,000.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

Sec. 12. 38 MRSA §569-B, sub-§5, ¶B, as amended by PL 1995, c. 399, §19 and affected by §21, is further amended to read:

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures, including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products ~~to ground water~~ from an ~~aboveground or underground~~oil storage facility;

Sec. 13. 38 MRSA §1296, as amended by PL 2005, c. 330, §25, is further amended by adding after the 4th paragraph a new paragraph to read:

The commissioner may initiate enforcement action under section 347-A in lieu of issuing an order under this section.

Sec. 14. 38 MRSA §1298, sub-§3, as enacted by PL 2007, c. 628, Pt. B, §4, is amended to read:

3. Application. The application under subsection 2 must be submitted together with a report by a lead inspector that indicates that the leased residential dwelling has been tested for the presence of lead-based paint and lead-contaminated dust ~~and~~or a report by a lead dust sampling technician that indicates the leased residential dwelling has been tested for lead-contaminated dust. The report must indicate that the dwelling meets the requirements for ~~certification as lead-safe~~inclusion on the registry in accordance with the standards and procedures established by ~~rules adopted by the commissioner~~the department.

Sec. 15. 38 MRSA §1319-C, sub-§3 is enacted to read:

3. Responsible party. "Responsible party" means any person who could be held liable under section 1319-J.

Sec. 16. 38 MRSA §1319-G, sub-§1-A is enacted to read:

1-A. Lien. All costs incurred by the State in the removal, abatement and remediation of an unlicensed discharge or threatened discharge of hazardous waste, waste oil or biomedical waste under this subchapter and interest are a lien against the real estate of the responsible party.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

Sec. 17. 38 MRSA §1393, sub-§2, as enacted by PL 2007, c. 569, §6, is amended to read:

2. Exceptions. Subsection 1 does not apply to:

A. A facility in existence or under construction on the effective date of the prohibition established under subsection 1. As used in this paragraph, "under construction" means that a substantial amount of money or effort has been expended toward completion of the facility as determined by the commissioner. The test of substantiality involves an assessment of the amount of money or effort expended in relation to the amount required to complete the facility;

B. The replacement or expansion of an underground oil storage facility in existence on September 30, 2001 or a facility identified in subsection 1, paragraph B in existence on September 30, 2008 as long as the replacement or expansion occurs on the same property and the facility meets all applicable requirements of law;

C. The conversion of an aboveground oil storage facility in existence on September 30, 2001 to an underground oil storage facility or vice versa, as long as the conversion occurs on the same property and the facility to be converted meets all applicable requirements of law;

D. The installation of an oil storage facility used solely to store heating oil for consumption on the premises, including the installation of an aboveground heating oil supply tank; or

E. The installation of a facility located on the same property as a well serving only users of that property.

This subsection may not be interpreted to allow the conversion, replacement or expansion of an underground oil storage tank or underground oil storage facility subject to the abandonment requirement under section 566-A.

Sec. 18. 38 MRSA §1661-C, sub-§1, as enacted by PL 2001, c. 373, §3, is repealed.

Sec. 19. 38 MRSA §1661-C, sub-§2, as enacted by PL 2001, c. 373, §3, is repealed.

Sec. 20. 38 MRSA §1661-C, sub-§6, ¶F, as enacted by PL 2003, c. 221, §4, is amended to read:

F. A manometer ~~other than a manometer prohibited from sale under subsection 2~~;

Sec. 21. 38 MRSA §1661-C, sub-§6, ¶I, as enacted by PL 2003, c. 221, §4, is amended to read:

I. A thermometer ~~other than a thermometer prohibited from sale under subsection 1~~.

Sec. 22. 38 MRSA §1661-C, sub-§9, ¶A, as enacted by PL 2009, c. 86, §1, is amended to read:

A. After June 30, 2011, a person may not sell or offer to sell or distribute for promotional purposes a mercury-added button cell battery identified in this paragraph or a product that contains a mercury-added button cell battery identified in this paragraph:

(1) A zinc-air button cell battery;

(2) An alkaline manganese button cell battery; or

(3) A silver oxide button cell battery stamped with the designation ~~SR357, SR364, SR371, SR377 or SR395~~357, 364, 371, 377, 395, SR44W, SR621SW, SR626SW, SR920SW or SR927SW or a silver oxide button cell battery that is interchangeable with a battery that is stamped with one of those designations; and

Sec. 23. 38 MRSA §1664, sub-§2, as repealed and replaced by PL 2003, c. 640, §1, is repealed.

Sec. 24. 38 MRSA §1665-B, sub-§2-A, as enacted by PL 2009, c. 277, §10, is amended to read:

2-A. Wholesaler responsibility. A wholesaler may not sell a thermostat in the State unless the wholesaler acts as a collection site for thermostats that contain mercury. A wholesaler may meet the requirements of this subsection by participating as a collection site in a manufacturer collection and recycling program under subsection 2. A wholesaler shall post in a prominent location open to public view a notice about the financial incentive plan developed pursuant to subsection 4. The notice must be approved by the department and supplied by the manufacturer at no cost to the wholesaler.

Sec. 25. PL 1995, c. 704, Pt. A, §24, 2nd ¶ is amended to read:

Unless a transfer of the permit-granting authority to the Department of Transportation occurs earlier, and notwithstanding any other provision of law, beginning June 30, 1999, the Department of Transportation has permit-granting authority relating to traffic. In the event of a transfer, a proposed development subject to review under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6, solely because it meets the traffic threshold provisions of Title 38, section 482, subsection 2, is subject only to the jurisdiction of the ~~Maine~~ Department of Transportation. ~~Projects subject to review under Title 38, chapter 3, subchapter I, article 6 on grounds including, but not limited to, the traffic threshold are subject to the joint jurisdiction of the Department of Environmental Protection and the Department of Transportation and this joint jurisdiction must be exercised through a consolidated proceeding.~~

Effective 90 days following adjournment of the 124th Legislature, Second Regular Session, unless otherwise indicated.