

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND EIGHTEEN

—  
H.P. 1229 - L.D. 1784

**An Act To Update the Laws Governing the Department of Environmental Protection's Rule-making Authority Concerning Underground Oil Storage Facilities To Align with Federal Regulations**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, in October 2015, the United States Environmental Protection Agency completed revisions to the federal regulations concerning technical standards and corrective action requirements for owners and operators of underground oil storage tanks; and

**Whereas**, states that have been delegated or authorized to administer federal programs must adopt regulations that are no less stringent than applicable federal requirements within 3 years from the date that any revisions to those federal requirements are adopted; and

**Whereas**, the State has been delegated or authorized to administer the federal regulations governing underground oil storage tanks since July 1992; and

**Whereas**, the State must adopt several revisions to its statutory provisions and corresponding rules regarding underground oil storage facilities no later than October 2018 in order to maintain its delegated status; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 38 MRSA §563-B, first ¶**, as enacted by PL 1987, c. 491, §10, is amended to read:

In addition to the rule-making authorities otherwise set forth in this subchapter, the ~~board~~ department may adopt rules related to the following matters:

**Sec. 2. 38 MRSA §563-B, sub-§2**, as amended by PL 1991, c. 763, §3, is further amended to read:

**2. Inventory reconciliation; precision testing; leak detection methods.** Procedures and methods to be used in conducting statistical inventory ~~analyses~~ reconciliation, underground oil storage facility precision testing and other leak detection methods. The rules must allow owners or operators of facilities undergoing routine monitoring in the absence of any other evidence of a leak:

A. To check the accuracy of complete statistical inventory data within ~~75~~ 30 days of receipt by the commissioner of the initial statistical ~~analysis~~ reconciliation by rerunning ~~analyses~~ reconciliations before inconclusive reports are considered to be a failure of the tank or piping;

B. To check for failures in any mechanical and electronic monitoring devices within 3 working days of an indication of failure before it is considered a failure of the tank or piping;

C. To engage in procedures under paragraphs A and B before requiring the precision testing of facility components; and

D. To check the accuracy of a failed or inconclusive precision test of facility components before the commissioner may order the excavation of the facility or any portion of the facility. An owner or operator is allowed 2 weeks to schedule a repeat of the precision test;

**Sec. 3. 38 MRSA §564, first ¶**, as amended by PL 1989, c. 865, §10, is further amended to read:

The ~~board~~ department shall adopt rules necessary to minimize, to the extent practicable, the potential for discharges of oil from underground oil storage facilities and tanks used to store motor fuel or used in the marketing and distribution of oil to others. These rules must ensure that requirements and standards governing facilities under this section assure that the State's program meets requirements under the United States Resource Conservation and Recovery Act of 1976, Subtitle I, as amended. These rules are limited to the following requirements.

**Sec. 4. 38 MRSA §564, sub-§1-A, ¶¶A and B**, as amended by PL 1991, c. 494, §4, are further amended to read:

A. Monthly statistical inventory reconciliation of daily product inventory data ~~and an annual precision test of all tanks and piping by an independent vendor using procedures approved by the United States Environmental Protection Agency.~~ Pressurized piping must be retrofitted with an automated in-line leak detector; or

B. Installation of one of the following leak detection systems:

(1) Secondary containment of all underground oil storage facility components or secondary containment for the tank and single-walled containment for suction

pipng sloped evenly to the tank and equipped with a single check valve under the pump;

~~(2) Continuous monitoring for free product in monitoring wells installed in the excavated area around the tank or tanks, and to detect a leak or discharge of oil from the piping not installed in accordance with subparagraph (1), one of the following:~~

- ~~(a) Continuous vapor monitoring;~~
- ~~(b) Annual tightness testing;~~
- ~~(c) Secondary containment with interstitial space monitoring; or~~
- ~~(d) Other methods of leak detection approved by the department;~~

~~(3) Continuous vapor monitoring in the unsaturated zone of all elements of the facility, using sufficient sampling points to detect a leak or discharge of oil from any point in the facility;~~

~~(4) Manual ground water sampling capable of detecting the presence of at least 1/8 inch of free product on top of the ground water table in a reasonable number of ground water monitoring wells installed in the excavated area, and to detect a leak or discharge of oil from the product piping not installed in accordance with subparagraph (1), one of the following:~~

- ~~(a) Continuous vapor monitoring;~~
- ~~(b) Annual tightness testing;~~
- ~~(c) Secondary containment with interstitial space monitoring; or~~
- ~~(d) Other methods of leak detection approved by the department;~~

(5) Automatic tank gauging that can detect a 0.2 gallon per hour loss, and to detect a leak or discharge of oil from product piping not installed in accordance with subparagraph (1), one of the following:

- (a) Continuous vapor monitoring;
- (b) Annual tightness testing;
- (c) Secondary containment with interstitial space monitoring; or
- (d) Other methods of leak detection approved by the department; or

(6) Other leak detection systems approved by the department that can detect a 0.2 gallon per hour leak rate or a leak of 150 gallons in 30 days with a 95% probability of detecting a leak and a 5% chance of false alarm.

~~Ground water monitoring for the detection of leaks may only be used to meet the requirements of this paragraph where the ground water table is never more than 20 feet from the ground surface and the hydraulic conductivity of the soils between the tank and monitoring wells is not less than 0.01 centimeters per second.~~

**Sec. 5. 38 MRSA §564, sub-§2-A**, as amended by PL 2011, c. 317, §1, is further amended to read:

**2-A. Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks.** The ~~board's~~ department's rules must require:

- A. Collection of inventory data for each day that oil is being added to or withdrawn from the facility or tank, reconciliation of the data, with monthly summaries, and retention of records containing all such data for a period of at least 3 years either at the facility or at the facility owner's place of business;
- B. ~~Annual~~ Monthly statistical inventory ~~analysis~~ reconciliation, the results of which must be reported to the commissioner. ~~Annual~~ Monthly statistical inventory ~~analysis~~ reconciliation is not required for double-walled tanks equipped with interstitial space monitors;
- C. Voltage readings for cathodically protected systems by a cathodic protection tester 6 months after installation and annually thereafter;
- D. Monthly inspections by a cathodic protection tester of the rectifier meter on impressed current systems;
- E. Precision testing of any tanks and piping showing evidence of a possible leak. Results of all tests conducted must be submitted to the commissioner by the facility owner and the person who conducted the test;
- F. Proper calibration, operation and maintenance of leak detection devices;
- G. Evidence of financial responsibility for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by sudden and nonsudden accidental discharges from an underground oil storage facility or tank;
- H. Reporting to the commissioner any of the following indications of a possible leak or discharge of oil:
  - (1) Unexplained differences in daily inventory reconciliation values that, over a 30-day period, exceed 1.0% of the product throughput;
  - (2) Unexplained losses detected through statistical analysis reconciliation of inventory records;
  - (3) Detection of product in a monitoring well or by other leak detection methods;
  - (4) Failure of a tank or piping precision test, hydrostatic test or other tank or piping tightness test approved by the department; and
  - (5) Discovery of oil on or under the premises or abutting properties, including nearby utility conduits, sewer lines, buildings, drinking water supplies and soil.

The rules may not require the reporting of a leak or discharge of oil above ground of 10 gallons or less that occurs on the premises, including, but not limited to, spills, overfills and leaks, when those leaks or discharges do not reach groundwaters or surface waters of the State and are cleaned up within 24 hours of discovery, if a written log is maintained at the facility or the owner's place of business in this State. For each discharge the log must record the date of discovery, its source, the general location of the discharge at the facility, the date and method of cleanup and the signature of the facility owner or operator certifying the accuracy of the log;

I. Compatibility of the materials from which the facility is constructed and the product to be stored;

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;

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 in addition to any other granted by law; and

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). The training program must provide certification for the successful completion of the program, which must be renewed every 2 years. Training may be provided by a 3rd party if approved by the department.

The requirements in paragraphs A and B do not apply to the following tanks ~~provided as long as~~ the associated piping has secondary containment or a suction pump product delivery system or another leak detection system approved by the commissioner and ~~provided that~~ as long as the tank and associated piping have been installed and are operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter: tanks providing product to a generator; double-walled tanks with continuous interstitial space monitoring; and existing tanks constructed of fiberglass, cathodically protected steel or another commissioner-approved noncorrosive material that are monitored for a leak by a method able to detect a product loss or gain of 0.2 gallons or less per hour.

**Sec. 6. 38 MRSA §564, sub-§6**, as enacted by PL 2015, c. 361, §1, is amended to read:

**6. Retrofit of existing underground tanks.** The ~~board's~~ department's rules must allow a person to retrofit a single-walled underground oil storage tank with secondary containment as long as the retrofitted tank complies with Underwriters Laboratories Subject 1316 or 1856 and interstitial monitoring of the retrofitted tank is equal to or greater than interstitial monitoring of a new tank. The ~~board~~ department shall require a site assessment of an underground oil storage facility when a tank is retrofitted in accordance with this subsection.

**Sec. 7. 38 MRSA §566-A, sub-§1**, as amended by PL 2011, c. 276, §2, is further amended to read:

**1. Abandonment.** ~~All~~ Except as provided by subsection 1-A, 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 ~~24~~ 12 months 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 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 2011, c. 276, §3, 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 24 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 tanks and piping have successfully passed testing as directed by the commissioner;
- C. The underground oil storage 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 24 12 consecutive months.

**Sec. 9. 38 MRSA §566-A, sub-§3**, as amended by PL 1991, c. 88, §1, is further amended to read:

**3. Rulemaking.** The ~~board~~ department shall adopt rules allowing for the granting of a variance from the requirement of removal where abandonment by removal is not physically possible or practicable due to circumstances other than those listed in this subsection. The ~~board~~ department shall adopt rules setting forth the proper procedures for abandonment of underground oil storage facilities and tanks, including requirements

and procedures to conduct a site assessment for the presence of discharges of oil prior to completion of abandonment at facilities storing motor fuel or used in the marketing and distribution of oil, acceptable methods of disposing of the removed tanks, requirements for venting at least 12 feet above ground level flammable gases purged from tanks and from trucks removing oil from tanks and procedures for abandonment in place where removal of a tank or other component of a facility is determined not physically possible or practicable.

**Sec. 10. 38 MRSA §570-F**, as repealed and replaced by PL 1991, c. 494, §15 and affected by PL 1997, c. 374, §14, is amended to read:

**§570-F. Special provisions**

This subchapter may not be construed to authorize the department to require registration of or to regulate the installation or operation of underground tanks used:

1. **Propane storage.** For the storage of propane; or
2. **Other structure.** As an oil-water separator, catch basin, flood drain or other emergency containment structure ~~provided that~~ as long as the structure:
  - A. Is used to collect, capture or treat storm water surface runoff or oil spills; ~~and~~
  - B. Is not used for the storage of oil; and
  - C. Is regulated under the federal Clean Water Act, 33 United States Code, Section 1317(b) or Section 1342.

The ~~board~~ department shall adopt rules for underground oil storage facilities for storing waste oil. The ~~board~~ department shall also ~~promulgate~~ adopt rules governing field-constructed, airport hydrant and heavy oil underground oil storage facilities. These rules are not limited by ~~the~~ other provisions of this subchapter ~~H-B~~.

**Sec. 11. 38 MRSA §570-N** is enacted to read:

**§570-N. Rules; wastewater treatment tank systems**

The department may adopt rules regulating wastewater treatment tank systems, including oil-water separators and catch basins, that meet the definition of "underground oil storage tank," except that this section does not apply to:

1. **Oil-water separators.** Oil-water separators and catch basins under section 570-F, subsection 2; and
2. **Storm water or wastewater collection.** Storm water or wastewater collection systems or flow-through tanks.

The department may adopt rules under this section for wastewater treatment tank systems relating to registration, tank construction, financial assurance and discharge response and corrective action. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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