



129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2033

H.P. 1443

House of Representatives, January 14, 2020

An Act To Ensure Proper Closure of Oil Terminal Facilities

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CARNEY of Cape Elizabeth.
Cosponsored by Senator MILLETT of Cumberland and
Representatives: CUDDY of Winterport, KESSLER of South Portland, MORALES of South
Portland, RECKITT of South Portland, TUCKER of Brunswick, Senators: CARSON of
Cumberland, LAWRENCE of York.

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

2 **Sec. 1. 38 MRSA §542, sub-§4-B** is enacted to read:

3 **4-B. Facility closure.** "Facility closure" means:

4 A. Removal of all oil and oil residuals from tanks and all related appurtenances;

5 B. Decontamination of the facility, related appurtenances and soil containing or
6 contaminated with oil or oil residuals;

7 C. Removal of tanks, related appurtenances and contaminated soil;

8 D. Disconnection and removal of underground piping or secure capping or plugging
9 of underground piping when removal is not feasible; and

10 E. Other steps required to safely decommission the facility and remediate the facility
11 site to an unrestricted use standard for residential and other uses or the most
12 protective use standard determined by the department to be practicable.

13 **Sec. 2. 38 MRSA §542, sub-§6**, as amended by PL 2015, c. 319, §11, is further
14 amended to read:

15 **6. Oil.** "Oil" means oil, oil additives, petroleum products and their by-products of
16 any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil
17 refuse, oil mixed with other wastes, asphalt, bunker fuel, crude oils and all other liquid
18 hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

19 **Sec. 3. 38 MRSA §542, sub-§7**, as amended by PL 1993, c. 355, §7, is further
20 amended to read:

21 **7. Oil terminal facility or facility.** "Oil terminal facility" or "facility" means any
22 facility of any kind and related appurtenances, located in, on or under the surface of any
23 land or water, including submerged lands, ~~which~~ that is used or capable of being used for
24 the purpose of transferring, processing or refining oil, or for the purpose of storing the
25 same, but does not include any facility used or capable of being used to store no more
26 than ~~4500~~ 1,500 barrels or 63,000 gallons, nor any facility not engaged in the transfer of
27 oil to or from waters of the State. A vessel is considered an oil terminal facility only in
28 the event of a ship-to-ship transfer of oil, but only that vessel going to or coming from the
29 place of ship-to-ship transfer and a permanent or fixed oil terminal facility. The term
30 does not include vessels engaged in oil spill response activities.

31 **Sec. 4. 38 MRSA §546**, as amended by PL 1991, c. 698, §6, is further amended to
32 read:

33 **§546. Regulatory powers of ~~board~~ department**

34 **4. Extent of regulatory powers.** The ~~board~~ department shall ~~have the power to~~
35 ~~adopt rules and regulations~~ including but not limited to rules governing the following
36 matters:

- 1 A. Operating and inspection requirements for facilities, vessels, personnel and other
2 matters relating to licensee operations under this subchapter, including annual
3 inspections of oil terminal facilities;
- 4 B. Procedures and methods of reporting discharges and other occurrences prohibited
5 by this subchapter;
- 6 C. Procedures, methods, means and equipment to be used by persons subject to
7 ~~regulations~~ regulation by this subchapter;
- 8 D. Procedures, methods, means and equipment to be used in the removal of oil and
9 petroleum pollutants;
- 10 E. Development and implementation of criteria and plans to meet oil and petroleum
11 pollution occurrences of various degrees and kinds, including the state marine oil
12 spill contingency plan required under section 546-A. Those plans must include
13 provision for annual drills, sometimes unannounced, to determine the adequacy of
14 response plans and the preparedness of the response teams;
- 15 E-1. Development and implementation of criteria and plans for facility closure
16 required under section 552-B. Those plans must include standards, procedures and
17 reporting requirements for removal of facilities and appurtenances and remediation of
18 the facility site to an unrestricted use standard or the most protective use standard
19 determined by the department to be practicable;
- 20 E-2. Standards for establishing financial assurance adequate to guarantee the
21 performance of licensee obligations under section 552-B;
- 22 F. The establishment from time to time of control districts comprising sections of the
23 Maine coast and the establishment of rules ~~and regulations~~ to meet the particular
24 requirements of each such district;
- 25 G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles,
26 motorized equipment and other equipment relating to the use and operation of
27 terminals, facilities and refineries and the approach and departure from terminals,
28 facilities and refineries;
- 29 H. Such other rules ~~and regulations~~ as the exigencies of any condition may require or
30 such as may reasonably be necessary to carry out the intent of this subchapter; and
- 31 K. Operation and inspection requirements for interstate and intrastate oil pipelines
32 excluding natural gas and artificial gas pipelines.

33 **5. Facility response plans.** Every facility subject to licensing under this section
34 shall file with the department a copy of any oil discharge response plan submitted to the
35 President of the United States under the federal Oil Pollution Act of 1990, Public Law
36 101-380, Section 4202, 104 Stat. 484, or a statement that a plan is not required under
37 federal law.

38 **6. Vessel response plans.** Every tank vessel, as defined under 56 United States
39 Code, Section 2101, entering state waters shall have available for inspection by the
40 commissioner or an agent of the commissioner a copy of any oil discharge response plan

1 required to be submitted to the President of the United States under the federal Oil
2 Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484.

3 **Sec. 5. 38 MRSA §552-B** is enacted to read:

4 **§552-B. Financial assurance and facility closure**

5 **1. Financial assurance.** An owner or operator of an oil terminal facility shall
6 provide the department assurance of its financial ability to satisfy liability imposed
7 pursuant to section 552, and to pay the estimated cost of facility closure, in compliance
8 with this subchapter and rules adopted by the department.

9 A. The owner or operator of a facility shall provide evidence of financial ability to
10 satisfy liability imposed pursuant to section 552 in an amount no less than
11 \$2,000,000.

12 B. The owner or operator of a facility shall provide evidence of financial
13 responsibility in an amount sufficient to ensure proper facility closure.

14 C. The owner or operator of a facility shall file with the department an estimate of
15 probable facility closure costs, including a preliminary facility closure plan, to be
16 eligible for a license required under this subchapter.

17 D. Financial assurance may be established, subject to the approval of the department,
18 by one or a combination of the following: insurance and risk retention group
19 coverage, guarantee, surety bond, letter of credit or trust fund. In determining the
20 adequacy of evidence of financial responsibility, the department shall consider the
21 criteria in 40 Code of Federal Regulations, Sections 280.96 to 280.99, 280.102 and
22 280.103.

23 E. Failure to meet the requirements of this subsection and the department's rules may
24 result in nonrenewal or revocation of a license in accordance with subsection 3.

25 **2. Facility closure.** An owner or operator shall close an oil terminal facility in
26 compliance with a written facility closure plan that meets standards for safe closure and
27 facility site remediation.

28 A. An owner or operator shall file a written facility closure plan with the department
29 within 60 days of a decision to close an oil terminal facility or upon the failure of the
30 owner or operator to use an oil terminal facility or portion thereof for more than 10
31 years. The owner or operator may not carry out any facility closure activities until
32 the department has approved the facility closure plan.

33 B. The department shall review the facility closure plan to determine compliance
34 with applicable rules, consistent with an annual processing time schedule adopted by
35 the department. The department's approval must include a timeline for completion of
36 the facility closure plan, including dates for performance of specific closure tasks.

37 C. The facility closure must be completed to the satisfaction of the commissioner.
38 The department may conduct inspections, including, but not limited to, soil,
39 groundwater and other testing, as a part of and to determine compliance with the
40 facility closure plan.

1 D. The owner or operator shall file a written facility closure completion report with
2 the department, which must include a certification from an independent licensed
3 professional engineer that the facility closure was conducted in accordance with the
4 approved facility closure plan and that all regulated substances have been removed or
5 remediated to the satisfaction of the department.

6 E. The department shall post the facility closure plan, departmental approval,
7 inspection and testing results and completion report, including the independent
8 licensed professional engineer's certification, required under this subsection on the
9 department's publicly accessible website for 6 years following the completion of the
10 facility closure.

11 **3. Enforcement.** An owner or operator that fails to comply with the financial
12 assurance or facility closure requirements of this section is subject to enforcement action
13 by the department, including revocation of the license required by sections 544 and 545.

14 **Sec. 6. Effective date.** This Act takes effect January 1, 2021.

15 **SUMMARY**

16 This bill ensures proper closure of oil terminal facilities by establishing financial
17 assurance and facility closure requirements. It develops a process for assessing the costs
18 of decommissioning oil terminal facilities and infrastructure and establishing financial
19 responsibility for closure costs. It requires, upon closure, removal of facilities and
20 appurtenances and remediation of the site to an unrestricted use standard or the most
21 protective use standard determined by the Department of Environmental Protection to be
22 practicable. It also requires facilities not in use for 10 years to file a closure plan. The
23 bill also requires oil terminal facilities to provide evidence of financial ability to satisfy
24 liability under existing law.