



**TESTIMONY OF MARK HYLAND
DIRECTOR, BUREAU OF REMEDIATION AND WASTE MANAGEMENT**

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 880

AN ACT TO IMPROVE THE GROUND WATER OIL CLEANUP FUND

**BEFORE THE JOINT STANDING COMMITTEE
ON NATURAL RESOURCES**

DATE OF HEARING:

MARCH 24, 2009

Senator Goodall, Representative Duchesne and members of the committee, I am Mark Hyland, Director of Remediation and Waste Management at the Department of Environmental Protection (DEP), speaking in opposition to LD 880.

This bill purports to improve the Ground Water Oil Clean-Up Fund (Fund) by limiting disbursements for DEP personnel, administrative costs and equipment to 5% of the fund balance. If the term "fund balance" is construed to mean the net annual Fund income (currently about \$17 million), then the proposed cap would limit disbursements for these purposes to about \$850,000 per year. If, on the other hand, the aim is to apply the cap to the cash balance in the Fund (currently about \$4 million), then LD 880 could limit Fund disbursements for

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DEP administrative expenses, personal services and equipment costs to as little as \$200,000 per year.

Given that we currently disburse from \$5.5 million to \$6 million each year from the Fund for these purposes, the practical consequence of this bill would be to shut down our oil storage tank program, and send home the 45 DEP staff whose positions are paid from the Fund. These include inspectors who oversee compliance with the storage tank rules that protect Maine's water resources from oil contamination, first responders who attend spills and help contain hundreds of oil tank leaks and overfills every year, and the technical staff who oversee spill cleanup and replacement of wells contaminated by those discharges, and who help numerous Maine residents who suffer heating oil spills in their homes.

From 2002 through 2006, over 2,400 oil spills have been reported to us each year. Not all of these are from storage tanks and not all of them require us to drive to the scene, but our response readiness allows us to get to the worst cases rapidly before the contamination spreads. It costs money to maintain these capabilities and services but it is money well spent. **Our rapid response system has enabled the department to clean up contaminated sites for about half the national average cost and about one third the average cost in Massachusetts and New Hampshire.**

As you may recall from our briefing to this Committee on February 10th, we are facing a multi-million dollar shortfall in the Fund. This shortfall is attributable to a combination of factors, including:

- The ongoing, steady increase in the number of oil discharges reported to us;

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- An increase in the number of grossly contaminated sites requiring cleanup;
- Increased cleanup costs; and
- The expansion of the Fund insurance program under which owners and operators of oil storage tanks that have suffered a leak are entitled to coverage of cleanup costs up to \$1 million per incident.

The Fund shortfall is not a problem that can be legitimately attributed to overstaffing at the DEP or one that can be fixed simply by laying off DEP staff as this bill would require. Our staff costs have increased over the years, but this is almost wholly due to inflation, particularly for healthcare, and not because we have increased the number of DEP employees paid from the Fund.

In fact, the number of staff paid from the Fund has not significantly changed since the Fund insurance program was established in 1990. And only six of the 45 Fund positions are truly administrative in nature. The majority are inspectors, responders, geologists and technicians who are out in the field overseeing compliance and cleanup. In addition, we have office staff who, among other things:

- Oversee the annual registration of oil storage tanks and maintain a database on the thousands of gas stations, bulk plants and other oil storage facilities in operation across the State;
- Process and pay claims for Fund coverage of damages to third parties from oil discharges;
- Process and pay claims by tank owners and operators for Fund coverage of cleanup costs; and

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- Pursue recovery of Fund disbursements for oil cleanup from the parties responsible for the discharge.

It is worth noting that, in 2002, when this Committee last took a close look at program staffing, the result was to authorize two additional positions—a geologist and a project manager—to help reduce the back log of contaminated sites.

Ultimately, putting the Fund on sound fiscal footing demands a comprehensive examination of every aspect of the program, an examination that we began last summer. We already are working with the regulated community and other interested parties to improve the cost effectiveness of the program through the evaluation and revision of cleanup standards, evaluation of the effectiveness of cleanup options and the development of more accurate analytical methods for contaminated soil.

Other areas that deserve to be explored include eligibility for the fund insurance program, the deductible amounts that must be paid by those eligible for fund coverage and the recovery of cleanup costs from responsible parties. Moreover, no discussion of the funding problem is complete without looking at ways to reduce the number of new oil discharges from spills and leaks at both commercial gasoline and oil storage facilities and home heating oil tanks.

Many of these topics are addressed in a department bill that will be introduced for consideration later this session. In the meantime, we urge you to vote ought not to pass on LD 880. We do not agree that the current Fund problems can be laid wholly to DEP staffing levels as that bill implies, nor do we think those problems can be solved simply by laying off all or most of our staff.

To the contrary, we do not believe any cuts in staff are warranted given the current work demands associated with our statutory responsibility to regulate

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and monitor oil storage facilities and to oversee the cleanup of past and ongoing oil discharges at those facilities. Moreover, staff cuts of the magnitude contemplated by LD 880 would have a domino effect, jeopardizing about \$800,000 in annual federal funding from the U.S. Environmental Protection Agency by making it impossible for us to meet state match requirements in the form of state-funded staff time.

One final observation—LD 880 directs the department to conduct an annual audit of the fund to ensure that standard accounting practices are being followed. This provision is unnecessary. It duplicates authority the Fund Insurance Review Board already has and frequently exercises under 38 MRSA §568-B(2)(D). The most recent fund audit was completed by Macdonald Page and Company in May 2008.

Thank you. That concludes my testimony.