STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

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COMMISSIONER

TESTIMONY OF

PATRICA AHO, DEPUTY COMMISSIONER
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING NEITHER FOR NOR AGAINST TO L.D. 1390
AN ACT TO REVISE REPORTING REQUIREMENTS FOR OIL SPILLS

BEFORE THE JOINT STANDING COMMITTEE
ON THE ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING: APRIL 26, 2007

Senator Saviello, Representative Hamper and members of the committee, I am Pattie Aho, Deputy Commissioner of the Department of Environmental Protection, speaking neither for nor against LD 1390.

It may surprise you to know, given the title of this bill, that the statutes we administer at the DEP do not require oil spills to be reported. There is a prohibition on the discharge of oil of any type [38 MRSA §543], but there is no corresponding statutory requirement to report spills. Except in the case of oil spills from ocean-going tankers and storage tanks where reporting requirements have been adopted in agency rules, Maine law leaves it up to the person suffering the discharge to decide whether to pick up the phone and call us.

While Maine law doesn't explicitly require reporting, it includes a safe harbor provision that creates a powerful incentive to report. Under this provision [38 MRSA § 550], any person who causes or is responsible for an oil spill, regardless of the amount, is not subject to fines or civil penalties if the spill is reported within two hours and cleaned up to the DEP's satisfaction.

This incentive to report has served Maine well. It ensures our spill response crews are notified about spills of potential consequence when they occur, and affords them the opportunity to take steps to oversee cleanup where appropriate. Oil spills that are promptly and appropriately cleaned up do considerably less environmental and economic damage. Moreover, we strongly believe that the current public policy in favor of disclosure encourages vigilance in preventing spills. It motivates people to take care in handling oil, to practice good housekeeping with their waste oil and gas.

That said we don't have a compelling need to know about every drip and drop of oil. If you slightly overfill your lawnmower or chainsaw, there is no need to call and no requirement under the law to do so (though I would point out that even small spills can sometimes have large impacts).

MEMORANDUMS OF AGREEMENT

We recognize the desire on the part of business that routinely handle oil to identify a category of spills that all can agree do not pose a significant risk to the environment, and to extend the safe harbor to such spills without the need to report them by phone. To that end, the DEP has entered into Memorandums of Agreement (MOAs) with over 30 companies to address oil spills of less than 10 gallons. These MOAs typically provide for the spills to be recorded in an on-site log and cleaned up by trained facility personnel in lieu of immediate reporting. The logs are submitted annually for our review.

The MOAs are limited to spills to impervious surfaces on a company's own property, and require that the spill be cleaned up immediately. Participating companies must demonstrate a commitment to spill prevention and an in-house cleanup capability. The MOAs provide significant regulatory relief, on the order of a 50% reduction in phone reports in most cases, while preserving the department's capability to oversee spills that pose a heightened risk to public health and the environment.

We think a better direction to take rather than the bill as drafted, would be to further outreach with the regulated community to create additional MOAs with interested companies, this will provide a private-public partnership which will foster regulatory relief for the private sector and will help the Department focus its resources on spills which aren't covered by MOAs.

Maine ought not to offer a safe harbor for failure to report. If someone chooses not to call in a spill, as they legally can do under current law, they should be prepared to take any consequences that ensue from that decision. The courtesy of a phone call is not a heavy burden in exchange for the safe harbor from fines.

Thus we would prefer to work with this Committee and the bill sponsor to improve our mechanism for Memorandums of Agreement with the regulated community. One area for improvement may be increasing the gallonage threshold for those facilities which have on-site expertise in these types of matters.

For the worksession, we will share examples of current MOAs, as well as pertinent statistics for small spill (five gallons or less) as proposed by this bill.

Thank you for the opportunity to provide you with our comments; I would be happy to answer any questions you may have.

TESTIMONY OF

MARK HYLAND

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 437

AN ACT TO ADDRESS THE REPORTING OF OIL SPILLS

BEFORE THE JOINT STANDING COMMITTEE ON NATURAL RESOURCES

DATE OF HEARING:

FEBRUARY 6, 2007

Senator Martin, Representative Koffman, and members of the Natural Resources Committee, I am Mark Hyland, Director of the Bureau of Remediation and Waste Management at the Maine Department of Environmental Protection, speaking in opposition to LD 437.

It may surprise you to know, given the title of this bill, that there is no explicit requirement in the Maine statutes to report oil spills. Maine law prohibits the discharge of oil of any type, but there is no corresponding statutory requirement to report the spill to the DEP. Except in the case of oil spills from ocean-going tankers and storage oil tanks where reporting

requirements have been adopted in agency rules, Maine law leaves it up to the person suffering the discharge to decide whether to pick up the phone and call us.

And we do get calls...lots of them. We get these calls because, while Maine law doesn't explicitly require reporting, it includes a safe harbor provision that creates a powerful incentive to report. Under this provision [38 MRSA § 550], any person who causes or is responsible for an oil spill is not subject to fines or civil penalties if the spill is reported within two hours and cleaned up to the DEP's satisfaction.

This incentive to report has served Maine well. It ensures our spill response crews are notified about spills of potential consequence when they occur and affords them the opportunity to take steps to oversee cleanup where appropriate. Oil spills that are promptly and appropriately cleaned up do considerably less environmental and economic damage. Moreover, we strongly believe that the current public policy in favor of disclosure encourages vigilance in preventing spills. The current law motivates people to take care in handling oil, if for no other reason than to maintain good community relations and avoid the stigma associated with repeated spills.

On the other hand, we don't have a compelling need to know about every drip and drop of oil. If you slightly overfill your lawnmower or chainsaw, there is no need to call and no requirement to do so. When the spill amounts to quarts or gallons, we welcome talking with the spiller about it so we can decide what if anything can and should be done.

LD 437 is troubling because it would allow persons who spill oil to enjoy the amnesty from fines for the discharge of gallons of oil, but without the need to report the spill to the Department. As under current law, the spill must be cleaned up if it reaches the ground surface, but the Department is deprived of

any opportunity to assess the situation and direct the cleanup. Those responsible for the spill will in effect decide the level of cleanup that is needed.

The bill directs the Department to adopt rules to implement the new amnesty language, and we presumably could attempt to exercise some oversight by including cleanup standards in such rules. However, there is good reason why there are no oil clean-up rules currently on the books. Spill response demands a case-by-case approach that is not readily or easily amenable to codification. The appropriate response requires the weighing of an array of factors including the type of oil, the amount spilled, spill location, proximity of sensitive receptors and weather conditions. Direct supervision by Department response staff is much more efficient and effective, and is standard practice that has served our state well for three decades. You may have seen our yellow response trucks on the highways.

In the case of discharges to soil, the bill would extend the protection from fines to unreported oil spills of up to 50 gallons. Oil spills of that amount can quickly contaminate hundreds of yards of soil, spreading far and wide and necessitating costly containment and cleanup measures. The historical record is rife with spills involving far smaller quantities of oil that necessitated extensive (and expensive) measures to safeguard groundwater resources. There is absolutely nothing in this record that suggests to us that the courtesy of a phone call is too heavy a burden to place on the responsible party in exchange for the safe harbor from fines.

This bill would even apply to unreported discharges of up to 50 gallons *on property not owned by the responsible party.* Under proposed subsection 550-A(5), any company, regardless of its capability or track record, could avail itself of the safe harbor from fines as long as it has prepared a contingency plan of unspecified content and without input or oversight from the Department. There is no minimum training requirement for the company

employees responsible for the cleanup, and no requirement to notify the property owner.

Our decades of spill response experience suggest that there is a marked tendency to under-report the amount of a spill. Responsible parties likely will give themselves the benefit of the doubt in calculating the amount of a spill for the purpose of determining if they should call the Department. The 50-gallon threshold inevitably will be stretched in many cases, and Department staff will be hard pressed to detect violations from review of spill logs long after the incident occurred.

It is unclear to us as to whether the bill is intended to encompass unreported discharges to a storm drain or sewer. On the one hand, proposed subsection 550-A(3) appears to leave Maine law unchanged on this point by excluding discharges that reach surface water. Given that all sewers eventually lead to surface water, this provision seemingly removes oil discharges to the sewers from the bill's reach. We are not wholly convinced this was the drafter's intent, however. Indeed, one can read proposed subsection 550-A(4) to condone the unlimited, unreported discharge of oil to sewers.

Admittedly, there often is little that our spill response staff can do in the case of most discharges to sewers. That is not inevitably the case, however. It sometimes is possible to recover some of the discharged oil from the sewer system manholes or other access points, and to take steps to protect treatment plants and the receiving water body. Moreover, there is a public interest in knowing how often and how much oil is discharged to Maine waters even if there is not much we can do to recover that oil.

This bill could be read to convey the State's imprimatur to the discharge of oil to sewers, suggesting that one environmentally acceptable way of handling oil spills is to wash them down the drain. It could re-institute the practice of constructing floor drains at industrial facilities to convey oil spills to

treatment plants, and would legislatively condone increased loading of petroleum pollutants to Maine's receiving waters. Treatment plants vary widely in their ability to handle petroleum discharges, and the Department has no scientific evidence indicating that these plants effectively treat oil. The oil may simply be dispersed and diluted in the treatment plant effluent. We do know, however, that high oil concentrations can kill the treatment plant bacteria and altogether disrupt the biological treatment process.

The bill [in proposed subsection 550-A(4)] also condones the unreported discharge of unlimited quantities of oil if the spill "is wholly contained within a building, a structure, secondary containment or equipment". By what standard is it to be judged whether a spill is wholly contained? And who makes that judgment? And when is that judgment made? This wording suggests that the DEP will be called only when discharger has definitively ascertained that the oil has escaped the facility or gone down the drain. This could be hours, days or weeks later by which time the opportunities for containment and mitigation will be severely limited. Rather than calling us at their earliest opportunity, the responsible party would potentially wait and see what happens and still enjoy protection from any penalties.

The bill contains no facility design standards to afford us the least bit of comfort that the building, structure or containment equipment is oil tight. It is not clear how facilities and structures with floor drains, cracked concrete floors and other direct portals to ground or surface water will be treated. Do only those facilities and structures made of impervious materials and having sidewalls qualify? Or do parking lots and other paved surfaces also qualify if the responsible party is lucky enough to capture most of the oil before it runs off the edge of the surface? The bill requires no monitoring of susceptible receiving waters to determine when and if containment has been breached. Moreover, secondary containment structures typically are designed as a

stopgap measure in the event of catastrophic failure. They are not regularly designed as structures to control the routine discharge of oil.

While we do not believe that phoning the Department to report a spill is burdensome in exchange for a safe harbor from fines, we are cognizant of the desire on the part of the regulated community to have the benefit of that safe harbor without the need to report. To that end, the Department has entered into Memorandums of Agreement (MOAs) with nearly a dozen companies to address oil spills of less than 10 gallons. These MOAs typically provide for the spills to be recorded in an on-site log and cleaned up by trained facility personnel in lieu of immediate reporting to the Department. The logs are submitted annually for Departmental review.

The MOAs are limited to spills on the company's own property, and require that the spill be cleaned up immediately. Participating companies must have a good track record on spill reporting, a demonstrated commitment to prevention and an in-house cleanup capability. The MOAs provide significant regulatory relief, on the order of a 50% reduction in phone reports in most cases, while preserving the Department's capability to oversee larger spills that pose a heightened risk to public health and the environment.

LD 437 undermines long-standing legislative policy by, in effect, condoning routine oil discharges of up to 50 gallons or more. If this bill is enacted as drafted, there will be considerably less incentive to minimize the risk of spills because responsible parties are held harmless from fines and penalties even when spills go unreported. This proposed veil of secrecy is contrary to the goals of Maine pollution prevention control law, and inevitably will result in increased contamination and ground water cleanup costs by inhibiting our Department's ability to bring our spill containment expertise to bear in a timely way.

TESTIMONY

OF

DAVID SAIT, DIRECTOR

DIVISION OF RESPONSE SERVICES

BUREAU OF REMEDIATION AND WASTE MANAGEMENT

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO LD 651

AN ACT TO ADDRESS REPORTING OF CERTAIN LOW-QUANTITY OIL RELEASES

BEFORE THE

JOINT STANDING COMMITTEE ON

NATURAL RESOURCES

SPONSORED BY: REPRESENTATIVE SAVIELLO OF WILTON

COSPONSORED BY: SENATOR MARTIN OF AROOSTOOK, REPRESENTATIVE ANNIS OF DOVER-FOXCROFT, REPRESENTATIVE JENNINGS OF LEEDS

REPRESENTATIVE JOY OF CRYSTAL, REPRESENTATIVE PINEAU OF JAY

SENATOR SAWYER OF PENOBSCOT, REPRESENTATIVE THOMPSON OF CHINA,

REPRESENTATIVE TOBIN OF WINDHAM, SENATOR WOODCOCK OF FRANKLIN

DATE OF PUBLIC HEARING: MARCH 18, 2003

Senator Martin, Representative Koffman, members of the Committee, I am David Sait, director of Response Services at the Department of Environmental Protection, speaking in

opposition to LD 651 as drafted. Based upon discussions prior to today's public hearing we understand from the sponsor of LD 651 that the bill will be substantially revised in a way that would satisfactorily address most of the Department's concerns. The Department appreciates those changes and stands ready to work the sponsor and the Committee to address the issues.

This bill would have a much more sweeping impact on the current oil spill-reporting regime than is apparent from the bill title. Since 1969 when the Legislature first enacted a prohibition on the discharge of oil to land or water [38 MRSA §543], Maine law has provided for the prompt reporting of all oil spills. Maine law, unlike federal law, provides that any person who causes a spill is not subject to fines or penalties if the spill is reported and cleaned up in a timely manner [38 MRSA §550]. This is an important incentive because oil spills that are promptly and appropriately cleaned up do considerably less environmental and economic damage.

LD 651 would allow oil discharges of unlimited quantity to go unreported as long as the discharge is directed to a licensed treatment plant, or contained inside a building or containment structure. The bill also would allow discharges of up to 50 gallons on someone else's property with no requirement to notify either the Department or the landowner. Oil contaminated with polychlorinated biphenyls (PCBs) at levels below 50 parts per million could be discharged onsite or offsite without reporting it the Department. Although the PCB levels fall below the threshold for categorization as hazardous waste, all spills of this oil warrant close scrutiny due to the bio-accumulative, persistent and toxic properties of the PCBs.

Subsection 550-A(2) of the bill would require that discharges be removed in accordance DEP rules or orders. Spill response, however, requires the weighing of an array of factors including the type of oil, the amount spilled, spill cause, spill location, proximity of sensitive receptors and weather conditions. For this reason, the vast majority of reported spills are removed under direct Department supervision on a case-by-case basis. The Department does not have rules governing oil spill cleanup and rarely issues written cleanup orders. We cannot issue written clean-up orders for spills that are not reported.

We do recognize, however, the desire to manage spill reporting in an efficient manner. To that end the Department has entered into Memoranda of Agreement with nearly a dozen companies to address oil spills of less than 10 gallons. The agreements typically call for the spills to be recorded in an on-site log and cleaned up by trained company personnel in lieu of immediate reporting to the Department. The logs then are submitted annually for Department review.

The MOAs apply to spills on a company's own property, and require that the spill be cleaned up immediately. Participating companies must have a good track record on spill reporting, a demonstrated commitment to prevention, and in-house cleanup capability. The MOAs provide significant regulatory relief, on the order of a 50% reduction in phone reports in most cases, while preserving the Department's ability to oversee larger spills that pose a heightened risk to public health and the environment.

Again, we understand the sponsors have recommended changes to the draft bill, and we will work with the committee during work session.