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Program Evaluation Report
of the
Maine Board of Underground Storage Tank Installers



Prepared for the Joint Standing Committee on the
Environment and Natural Resources
October 14, 2011



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STATE OF MAINE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Bill Carver, Chair
Board of Underground Oil Tank Installers
17 State House Station
Augusta, ME 04333

April 29, 2011

RE: Government Evaluation Act Review

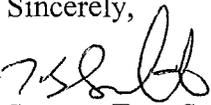
Dear Mr. Carver:

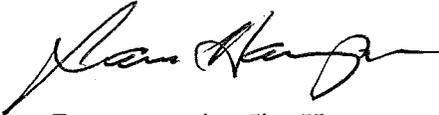
The Joint Standing Committee on Environment and Natural Resources is writing to inform you of its decision to review the Board of Underground Oil Tank Installers pursuant to the Government Evaluation Act, Title 3 of the Maine Revised Statutes, chapter 35. The objective of the law is to provide for the periodic review of the departments and independent agencies of State Government in order to evaluate their efficiency and performance in carrying out their legislative mandate.

As required by 3 MRSA § 955, the Board must submit a program evaluation report to the Natural Resources Committee by **November 1, 2011**. The report then forms the basis for the committee's review and issuance of its findings and recommendations during the Second Regular Session. The information required to be provided in the agency program evaluation report is specified in statute at 3 MRSA § 956. The committee will conduct its review of the Board during the Second Regular Session. If you have any questions regarding the government evaluation review process, please contact our legislative analyst, Susan Johannesman, at the Office of Policy and Legal Analysis.

The committee looks forward to working with you on this review. Thank you for your attention to this matter.

Sincerely,


Senator Tom Saviello
Senate Chair


Representative Jim Hamper
House Chair

cc: Members, Joint Standing Committee on Environment and Natural Resources
James Hynson, Board Staff, DEP
Theresa Scott, Board Staff, DEP
Susan Johannesman, OPLA

Introduction

Maine law (3 MRSA §959.L(5)) requires the Maine Board of Underground Storage Tank Installers to undergo review pursuant to the Government Evaluation by the Joint Standing Committee on the Environment and Natural Resources in 2011. The statute (3 MRSA §955.2) further requires the Board to submit a program evaluation report to the Committee by November 1, 2011.

Pursuant to 38 MRSA §956.2, the report must contain the following elements:

- A. Enabling or authorizing law or other relevant mandate, including any federal mandates;
- B. A description of each program administered by the agency or independent agency, including the following for each program;
 - (1) Established priorities, including the goals and objectives in meeting each priority;
 - (2) Performance criteria, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives; and
 - (3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives.
- C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility;
- D. Compliance with federal and state health and safety laws;
- E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years;
- F. Regulatory matters applicable, the regulatory agenda and the summary of rules adopted;
- G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;
- H. Identification of the constituencies served by the agency or program, noting any changes or projected changes;
- I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;
- J. Identification of emerging issues for the agency or program in the coming years.
- K. Any other information specifically requested by the committee of jurisdiction.
- L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;

- M. Agency policies for collecting, managing and using personal information over the Internet and in paper files, information on the agency's implementation of information technologies and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement; and
- N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public.

The following report seeks to present that information as required.

1. Enabling or authorizing law or other relevant mandate, including any federal mandates.

Enabling Law

In 1983, the Legislature charged the Department of Environmental Protection (DEP) with developing a plan for regulating underground oil storage tanks (P.L. 1983, Chapter 785). At that time, Maine experienced a handful of major leaks from underground storage tanks (USTs) that contaminated several town centers and subsequently resulted in cleanup costs between \$500,000 and \$1,500,000. The frequency of less dramatic leaks exhibited a marked increase at that time.

The resultant plan found improper installation due to poorly trained installers to be a major source of installation failure.¹ At least one national study corroborated this finding.² DEP further concluded that addressing this issue through State inspection of all UST installation and repair would be prohibitively expensive³ and that no other professional regulation authority in Maine had the technical expertise to assume the role of training and regulating UST installers.⁴ After assessing a number of alternatives for establishing a regulatory authority, DEP recommended a peer review Board be established within the Department.⁵

The Legislature enacted the enabling statute for the Maine Board of Underground Storage Tank Installers (BUSTI) in 1985 as 32 M.R.S.A. Subchapter 104-A (§10001 -- §10015) (Appendix A). It accompanied legislation specifying the authority and requirements for the Department of Environmental Protection (DEP) for regulating the installation, operation, and removal of underground oil storage tanks.

Amendments occurred to BUSTI's enabling law in 1987, 1989, 1990, 1992, 1997, 1999, 2000, 2001, 2003, 2005, and 2007 predominantly to add or delete certification categories and revise field experience requirements for installer applicants, but also to address the Board's enforcement authority and modify

¹ Hyland, M., J. Hynson, M. Moreau, and G. Seel. Comprehensive Regulatory Plan for Underground Oil Storage. Maine Department of Environmental Protection, Pp. 47 – 58.

² Woods, Jr., Paul H., and Dale E. Webster. "Underground Storage Tanks: Problems, Technology, and Trends." Pollution Engineering, July 1984. Pp. 30-40.

³ Hyland *et al.* p. 57.

⁴ *Ibid.*, Appendix H.

⁵ *Ibid.*

BUSTI composition in one or two instances. 2001 amendments added a category of certified inspectors in order to respond to National and state audits that showed widespread non-compliance of underground storage tank facilities with ongoing operation and maintenance requirements.

An additional amendment in the 2003 Legislature addressed Board composition, while one in the 2005 Legislature changed the appeal venue for Board decisions from District Court to Superior Court. One set of amendments in 2007 consolidated language, repealed the various classes of installers and replaced them with a single installer certificate, gave the Board more flexibility to establish apprenticeship requirements than what had been previously prescribed by statute, and repealed the underground gasoline tank remover certificate. A second set of amendments in the 2007 Legislature modified language involving the disposal of fees and set up a process to address the issue of uncertified practice.

Federal Mandates

Federal Law (RCRA) Subtitle I, Section 9004 provides for approval of State regulatory programs for UST's and delegation of Federal regulatory authority. In order to obtain such approval, the U.S. Environmental Protection Agency must determine the State's program is no less stringent than the Federal regulation.

Federal regulation (40 CFR Part 280.20(e)) requires the use of one of several options for ensuring qualification of UST Installations. Maine elected to seek program approval for this element from the Federal Government by implementation of the installer certification program administered by BUSTI.

The U.S. Environmental Protection agency approved Maine's program and delegated Federal authority (40 CFR Part 282.69) based in part upon our installer certification program.

In 2005, Federal law amending RCRA Subtitle I was enacted to require periodic inspections of underground storage tanks (42 USC §6991d(c)). Subsequently, the U.S. Environmental Protection Agency developed guidelines for inspections that would continue to qualify States for continued underground storage tank grants.⁶ Those guidelines provided for qualified third parties contracted by tank owners and operators to be able to conduct inspections, provided the state provided acceptable training, regulation, and audit capabilities. The Board's program met the Federal criteria.

⁶ U.S. Environmental Protection Agency. 2007. Grant Guidelines To States For Implementing The Inspection Provisions Of The Energy Policy Act Of 2005. EPA 510-R-07-004. Office of Underground Storage Tanks, Washington, D.C. 8 p.

2. A description of each program administered by the agency or independent agency, including the following for each program.

BUSTI's programs include certifying and regulating individuals to install, remove, and inspect underground oil storage tanks. Certification involves a combination of checking backgrounds, developing and administering written examinations, and in the case of certified installers, ensuring a level of field experience. Recertification on a biennial basis involves ensuring certified individuals maintain a level of continuing competency as demonstrated through attendance at continuing education courses. Regulation includes the existence of standards of practice for certified individuals and provision for due process and adjudication of complaints against certified individuals before BUSTI.

2.1. Established priorities, including the goals and objectives in meeting each priority.

BUSTI's enabling statute (32 MRSA § 100001) provides a framework for the agency's goals:

- Safeguard the public health, safety, and welfare;
- Protect the public (including underground storage facility owners and the public at large) from incompetent and unauthorized persons;
- Ensure highest degree of professional conduct on the part of certified installers, removers, and inspectors; and
- Ensure availability of services.

Specific aspects of public health, safety, and welfare form the basis of providing these programs. The primary public health issue is the threat of improperly installed underground oil storage facilities leaking and resulting in contamination of existing or potential drinking water supplies. The primary public safety issue involves the threat of explosion or fire involved with either unconfined flammable liquids being present from leaks or from construction operations that involve the installation or removal of underground tanks.

Administratively, a variety of objectives exist for BUSTI. They are:

- Certification instruments that provide demonstration of competency.
- Testing schedule to meet needs of applicants.
- Continuing education in sufficient availability to meet recertification needs.
- Continuing education that builds expertise and keeps installers/inspectors current with technological and regulatory changes.
- Rules and decisions that are speedy, protect due process, is fair, reasonable, workable, consistent, and protective of public health, safety, welfare, and the environment.

2.2. Performance criteria, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives.

BUSTI uses the following measures:

- Frequency of oil discharges to the environment caused by improper underground tank installation;
- Oil cleanup costs avoided by proper installation of underground oil storage facilities;
- Numbers and results of annual inspections accomplished by certified installers and inspectors;
- Numbers of violations by certified individuals;
- Testing Information;
- Numbers of certified individuals; and
- Availability of continuing education offerings.

2.3. An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives.

Frequency of oil discharges to the environment caused by improper underground tank installation. Over the years of its existence BUSTI's certification, enforcement, and continuing education programs have dramatically improved the quality and safety of underground storage tank installations. Prior to the formation of BUSTI and the associated regulatory program of the DEP, Federal and State studies cited improper installation as one of the major causes of oil discharges from underground oil storage facilities. Fortunately, in its history BUSTI never received a complaint alleging a discharge of oil resulting from improper installation of an underground oil storage facility by an underground oil storage tank installer who was certified at the time a discharge was discovered.

Between Federal Fiscal years 2007 and 2010, DEP reported 170 discharges from federally regulated underground storage tank facilities to the U.S. Environmental Protection Agency. Of these, two (2), or approximately 1.2% were attributed to improper installation. They appear not to have been reported to BUSTI because the installer(s) had allowed their certificates to lapse long before discovery of the incidents.

Maine began conducting "autopsies" of underground storage tanks installed under Maine DEP and Federal rules and subject to Federal regulation in 2000. Data for 2007—2010 is presented in Figure 1. Forty-three (43) were determined to originate from the tank and thirty-one (31) from the piping. Thirty-six (36) involved delivery problems sixty-four (64) occurred around the dispenser, and twenty-six (26) were of unknown origin.

As a result of a fatal incident caused by the explosion of underground gasoline tanks being removed, the Legislature required certification by BUSTI of persons removing such tanks in 1987. Since that time, no similar incident has occurred.

Oil Cleanup Costs Avoided by Proper Installation and Inspection of Underground Oil Storage Facilities. DEP compiled cleanup costs for UST discharges and determined the average cost of cleanup in 2009 was \$56,492. As shown in Section 5, the contribution of the Groundwater Oil Cleanup Fund to the BUSTI program for 2009 was slightly over \$145,000. Therefore, avoiding just over two and one half (2 ½) UST discharge cleanups through proper installation and professional inspection pays for the Groundwater Fund contribution to the program.

Numbers and results of installations and annual inspections. Since our last Program Evaluation Report in 2003, 381 underground storage tanks have been installed. In addition, significant work has been accomplished retrofitting new piping, overfill and spill protection equipment, leak detection equipment, and other ancillary equipment. In FY 2010/11, 2,118 out of 2,192 underground storage facilities and above ground storage facilities with underground piping that require inspection were inspected by certified underground storage tank installers or inspectors. These data suggest a sufficient number of certified individuals exist to meet the demand for inspections.

Number of individuals certified. The trend in the numbers of individuals certified is portrayed in Figure 2.

Testing Data. Table 1 provides a summary of BUSTI's examination efforts.

Numbers of violations by certified individuals. Figure 3 shows the history of installer, remover (a certificate no longer offered), and inspector violations BUSTI encountered during its history.

BUSTI Continuing Education. Figure 4 charts the number of continuing education programs accredited by BUSTI during its history. Maine remains unique in its attention to providing installers and inspectors ongoing access to training in the equipment and techniques used for installing and maintaining underground oil storage tank facilities. BUSTI routinely partners with the Department of Environmental Protection and the Maine Energy Marketers' Association (formerly the Maine Oil Dealers' Association) in offering certified installers and inspectors access and incentive to programs to increase professional knowledge among our regulated community.

BUSTI's enabling legislation mandated the Board include a "continuing competency" requirement for recertification. In its rules, BUSTI decided the most reasonable way to do that was through some kind of continuing education program. Those rules provide for eight (8) continuing education credits being required for biennial certificate renewal. Annually, BUSTI seeks to provide one or two day long programs available to certified individuals. Each provides four (4) continuing education credits. BUSTI accredits a variety of safety refreshers for two (2) hours each that are required by the U.S. Occupational Safety and

Health Agency (OSHA) for persons to work at sites regulated under the Federal Resource Conservation and Recovery Act (RCRA), including gasoline marketing facilities with underground tanks. BUSTI also provides credit for a number of petroleum equipment manufacturer or vendor sponsored training, and will consider relevant requests from certified individuals as well.

Fiscal Year	Times Offered		Initial		Variance	Final Class 2		Final Class 3		Remover		Inspector		Installer On Site		Remover On Site		Total
	Offered	Pass	Fail	Pass		Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	
1985/86	3	237	54															291
1986/87																		0
1987/88	3	58	24															82
1988/89	2	66	19										16	7				108
1989/90	1	13	4										17	3				37
1990/91	3	19	7			2	1	1										30
1991/92	3	11	6	3		5	1	3	2	2	2							35
1992/93	2	7	5			4	4	1	1									22
1993/94	2	2	2			6	1			1								12
1994/95	2	10	5	1		4				3	1					2		26
1995/96	2	4		1		2				4								11
1996/97	2	6				2				1						1		10
1997/98	2					3	2											5
1998/99	3	1	3			2												6
1999/2000	0																	0
2000/01	1			1		1												2
2001/02	1	1																1
2002/03	3	7	2	1		1						5	17					33
2003/04	3	6					1					17	23					47
2004/05	3	5	4			1	2					7	25					44
2005/06	3	1	2			2	1	2		1		9	17					36
2006/07	2	5	4	1		2	1					13	13					38
2007/08	3	8	7			3	0					8	10					36
2008/09	2	3	5			1	1					13	7					30
2009/10	2	3	5			4	3					5	7					27
2010/11	2	3	2									5	10					20

Table 1. Results of examinations offered by the Maine Board of Underground Storage Tank Installers.

3. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility.

Two individuals, including one Environmental Specialist IV and one Planning and Research Associate I, provide staff support to a lay board which consists of six (6) volunteer members and one appointed representative of the DEP. The Board's staff support is integrated into the staff hierarchy of the DEP as portrayed in Figure 5 and also answers to the Board as portrayed in Figure 6. Board staff provides assistance in other efforts associated with the Ground Water Oil Cleanup Fund, from which they are paid. Other staff also compensated from the Ground Water Oil Cleanup Fund in DEP reciprocates with intermittent assistance to Board activities.

4. Compliance with federal and state health and safety laws.

4.1. Americans with Disabilities Act

Since the program is administered by the DEP, that agency is responsible for ensuring Title 1 ADA requirements are addressed in the Board's program. Title 2 issues consist exclusively of ensuring that BUSTI's application and testing protocol do not discriminate against people with disabilities who could perform all the essential functions of a certified installer or inspector.

In order to accomplish its Title 2 requirements, BUSTI's application form provides an opportunity for persons with disabilities to identify themselves and request special procedures for testing, as appropriate. Board staff request advisory assistance from the Maine Department of Labor in identifying appropriate accommodations as needed.

4.2. OSHA

DEP provides oversight for staff safety issues and the Board's staff are included in DEP's safety program. The Environmental Specialist IV, who performs field inspection and investigation work, is required to complete a 40 hour "HAZWOPER" safety course, 8 hour annual refreshers, and first aid training as required by 29 CFR 1910.120. Both employees receive annual office safety and CRT safety refreshers annually. Office space is subject to safety inspection by DEP staff, and safety equipment is provided by DEP.

The regulated community receives some exposure to OSHA construction and hazardous site rules through the examination for certification as a tank installer. Certified installers are granted continuing education credit for completing training OSHA requires of them under "HAZWOPER" and "Construction Standards" rules.

4.3. Affirmative action and Worker's Compensation – State of Maine and DEP programs apply.

DEP provides management and oversight to ensure affirmative action and worker's compensation issues are addressed in accordance with State of Maine directives.

5. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years.

Year	Expenses				Income		
	Personal Services.	Fringe	Other ⁷	Total	Direct Program Income	Ground-water Fund	Total
2001/2002	\$76,705.20	\$29,456.49	\$11,873.23	\$118,034.92	\$11,500.00	\$106,534.92	\$118,034.92
2002/2003	\$81,107.37	\$33,698.78	\$16,404.01	\$131,210.16	\$13,150.00	\$118,060.16	\$131,210.16
2003/04	\$87,956.57	\$37,263.71	\$41,068.74	\$166,288.82	\$18,345.00	\$147,943.82	\$166,288.82
2004/05	\$86,078.41	\$41,018.76	\$15,304.90	\$142,402.07	\$16,027.85	\$126,374.22	\$142,402.07
2005/06	\$90,015.60	\$48,949.14	\$21,772.35	\$160,736.49	\$23,641.78	\$137,094.71	\$160,736.49
2006/07	\$94,131.24	\$52,946.11	\$23,143.47	\$170,220.82	\$17,950.00	\$152,270.82	\$170,220.82
2007/08	\$95,719.69	\$55,393.13	\$19,511.26	\$170,624.08	\$26,755.00	\$143,869.08	\$170,624.08
2008/09	\$96,415.00	\$57,441.95	\$19,195.02	\$173,051.97	\$17,585.00	\$155,466.97	\$173,051.97
2009/10	\$91,468.29	\$54,454.29	\$19,565.31	\$165,485.89	\$20,140.00	\$145,347.89	\$165,485.89
2010/11	\$93,240.27	\$47,738.04	\$14,551.70	\$155,530.01	\$15,855.00	\$139,675.01	\$155,530.01

6. Regulatory matters applicable, the regulatory agenda and the summary of rules adopted.

BUSTI completed its most recent rulemaking on February 3, 2008 and has one item on its regulatory agenda (Appendix B) at this time. The chronology and summaries of rule chapters are provided below.

6.1. Chapter 1: Administrative Rules.

BUSTI originally promulgated Chapter 1 on July 29, 1988. Subsequent amendments occurred on May 18, 1990; August 17, 1990; November 15, 1992; May 17, 1998, June 14, 2002, August 9, 2006, and February 3, 2008. Electronic conversion occurred August 28, 1996.

This chapter establishes basic operational procedures for the Maine Board of Underground Storage Tank Installers. Specifically, it details the organization of the Board; and standards of practice for underground tank installers and inspectors. Moreover, it provides for enforcement and disciplinary action by the Board, and enables the Board to issue advisory rulings.

6.2. Chapter 2: Rules of Practice and Procedure Governing Adjudicatory Proceedings.

Chapter 2 became effective July 29, 1988 and was amended on June 13, 1990 and June 19, 2002 and February 3, 2008. Electronic conversion occurred August 28, 1996.

This chapter establishes rules of practice for the Board of Underground Storage Tank Installers to engage in adjudicatory proceedings. Included are (1)

⁷ Includes Longevity/Overtime

specifications of duties and responsibilities of the presiding officer, (2) definition of the rule of Board members, (3) prohibition of *ex parte* communications, (4) identification of parties who can participate in such proceedings, (5) provisions to enable intervention in the proceedings, (6) details of the order of proceedings, (7) a process to issue subpoenas, and (8) requirements for notice of hearings.

6.3. Chapter 3: Certification of Underground Oil Tank Installers.

BUSTI enacted Chapter 3 on August 14, 1988 as Chapter 1 §4. It was changed to Chapter 3 on June 8, 1990 by Emergency Rule and amended June 13, 1990, August 26, 1990, November 15, 1992, August 9, 2006, and February 3, 2008. It was electronically converted on August 28, 1996. A history correction occurred November 15, 2000.

This chapter establishes a certification program for underground oil tank installers. It defines classes of certificates, describes the initial examination process, states apprenticeship requirements, and grants authority for final examinations. In addition, it provides status to individuals certified prior to the adoption of these rules, establishes a mechanism for upgrading certificates, granting reciprocity, renewing and issuing certificates, and certifying employees of the Department of Environmental Protection.

6.4. Chapter 4: Certification of Underground Hazardous Substance Tank Installers.

Chapter 4 became effective June 13, 1990. Based on legislative repeal of the certificate, BUSTI repealed these rules on May 17, 1998.

6.5. Chapter 5: Certification of Underground Gasoline Tank Removers.

BUSTI promulgated Chapter 5 on August 17, 1990 and amended it November 15, 1992 and June 19, 2002. Electronic conversion occurred on August 28, 1996. BUSTI repealed these rules February 3, 2008.

6.6. Chapter 6: Certification of Underground Oil Storage Tank Inspectors.

Chapter 6 became effective June 19, 2002 and was amended on August 9, 2006. This chapter establishes a certification program for underground oil storage tank inspectors. This program includes application, a written or oral examination, certification, and renewal. A reciprocity process is also included.

7. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements.

Administrative functions and management of the Board are assumed by the DEP pursuant to 32 MRSA § 10003.1. Response and Compliance staffs of the DEP's Bureau of Remediation and Waste Management provide field assistance, regulatory interpretations of rules under their jurisdiction, and field oversight to BUSTI and its staff. Field staff of DEP's Bureau of Air Quality Control, and Underground Storage Tank (UST) Program staff of the U.S. Environmental Protection Agency coordinate in a similar, if less intensive manner.

DEP Bureaus of Remediation and Waste Management, Air Quality, and Land and Water Quality use continuing education opportunities provided by BUSTI to advise the regulated community of relevant rules and programs. The U.S. Environmental Protection Agency participates in BUSTI's continuing education programs. BUSTI also assesses, on request, continuing education opportunities provided by other States and grants education credit for programs provided elsewhere that Maine certified installers and inspectors attend.

BUSTI integrates its data regarding certified persons into the DEP's overall information base on underground tanks such that sites worked on by individual installers or inspectors are available to BUSTI staff, and educational credentials and violation histories of installers and inspectors are available to DEP compliance staff.

8. Identification of the constituencies served by the agency or program, noting any changes or projected changes.

8.1. Regulated community

The community regulated by the Board of Underground Storage Tank Installers includes applicants as well as certified underground storage tank installers and certified underground storage tank inspectors. Interest in certification and the number of certified underground tank installers was high when the program began and Maine also embarked on the task of removing all underground oil storage facilities or replacing them with ones less likely to contaminate ground water from leaks. The removal or replacement program had a deadline of October 1997 and the population of certified installers reflected the date the program began and the ending of the replacement program. After inception in

1986, the installer population grew to 268 in 1991 and experienced a decline since as the task of removal and replacement of facilities was completed.

While this decline continues as the current population of certified installers ages and retires, demand for the services of installers will increase long term as the population of underground storage facilities ages and requires repair or replacement. Legislated mandates for more formal documentation of annual inspections will foster increased repair and retrofit work and stimulate demand for additional installers and demand for installers to complete the required inspections and documentation of the inspections.

The demand for annual inspections also prompted the formulation of a different certificate, underground tank inspector. Interest in this certificate expanded until the demand for annual inspections was met and then stabilized.

8.2. Users of Services of the Regulated Community.

Users of the services of underground oil storage tank installers and inspectors constitute a constituency of this Board. Most notably are the owners and operators of underground oil storage facilities who rely on certified installers and inspectors to keep their facilities in operation and in compliance with State and Federal underground tank rules. One surrogate indicator of the size of this population is the number of active underground tanks.

Since the inception of the installer certification program and the DEP UST regulatory program, numbers of tanks significantly declined as owners and operators decided whether or not sites were economically viable enough to bring into compliance with provisions to reduce underground discharges. Prior to assuming authority for the regulation of underground tanks, the Maine DEP estimated the number of UST's at about 40,000. Currently, there are 2,842 active and temporarily out of service underground oil storage tanks located on 1,597 sites registered with the Maine DEP.

Figure 7 depicts the installation date for Maine's underground tank population. The data show a strong correlation with the State's mandated removal and replacement schedule which began soon after DEP assumed authority, and ended finally in October, 1997. While interest in new installations appreciably declined since 1998, when DEP emphasized actions to remove out of compliance tanks, all the tanks installed in the meantime continue to age. A continuing decline in interest for full installations can be expected, but the need for maintenance services by installers will begin to rise, and demand for full installations will again increase as this population of tanks reaches the end of its useful life.

Additional users of the certified installer and inspector program are the real estate professionals who rely on certified individuals to ensure the marketability of underground oil storage facilities, and municipal and county planners who rely on certified installers and inspectors as safeguards when permitting underground oil storage facilities at the local level.

8.3. Public at Large.

Lastly but most importantly, the Board serves the public at large by enhancing their trust that the underground storage facilities they live and work near provide sufficient safeguards against environmental degradation and compromises to public safety.

9. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives.

In itself, the program privatizes the function of oversight to UST installation, operation, inspection, and maintenance. Since the inception of UST regulation by the DEP, Maine realized the private sector was much better able to provide supervision intended to protect the public from failed UST sites than the public sector. Thus, we chose a program to ensure that technical knowledge and ethical behavior characterized those offering UST installation and inspection services in the private sector rather than gathering the resources to accomplish the tasks of supervising installations and conducting all inspections ourselves. A number of other states elected to have all such oversight accomplished directly by the state.

By offering continuing education through an accreditation program rather than simply conducting all of it under Board sponsorship, the Board is using the private sector to deliver needed expertise to the regulated community. Finally, our most recent examination development has been accomplished by contract rather than in-house and as such serves as an alternative delivery system.

10. Identification of emerging issues for the agency or program in the coming years.

The issue of maintaining and developing an adequate supply of trained individuals to meet demand for installation and inspection services is and will remain of concern. In the short term, a question exists as to whether enough installers and inspectors exist to service the requirements for documenting inspections, repairing deficiencies discovered during those inspections, and conducting other routine maintenance. We are monitoring the compliance rate and reasons for non-compliance of inspection requirements among UST owners and operators.

In the longer term, we need to develop a new generation of certified installers to conduct the replacement of facilities now active. The overwhelming percentage of tanks in Maine was replaced after DEP assumed authority for UST regulation in 1985. Since the deadline for removal or replacement was October 1997, most facilities were replaced before that date. We are left with a population of facilities that will all require replacement again more or less at the same time. In the meantime, demand for installation services will remain comparatively low and not

attract new participants in the field, raising the possibility that when they are needed they will not be available.

Natural attrition among our existing population of installers raises the issue of maintaining the technological expertise to inspect, service, and maintain a diverse array of equipment present in the field. We hope that a new generation of installers can begin training and developing experience before attrition claims the knowledge and expertise of the current generation.

11. Any other information specifically requested by the committee of jurisdiction.

BUSTI was not requested to provide additional specific information.

12. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program.

Section 1 provides a discussion of related Federal laws and regulations and their effect on Maine's program.

13. Agency policies for collecting, managing and using personal information over the Internet and nonelectronically, information on the agency's implementation of information technologies and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement.

Personal information collected from applicants and certified individuals includes names, contact information, social security number, relevant education and experience to UST installation and inspection, and statements of references. Personal information generated includes test scores and violation history. Since we have not yet had access to the capability for collection of such information electronically, it is collected using paper forms. Applications are available on the Internet, however, such that an applicant can print it out, complete it, and mail it to us.

The application form provides notice to the applicant that all information requested on the form except the social security number is public pursuant to Maine's Freedom of Access Law (1 MRSA §401 et. Seq.). The social security number is only divulged to officials who need to know for tax purposes as required by law. Social Security numbers are provided to the State Tax Assessor pursuant to 36 MRSA §175. Completed application forms and personal files are kept under the supervision of BUSTI and DEP staff.

Names and business contact information for certified persons are provided on the Internet for the purposes of advising potential customers of certified persons of the availability of the service. This information is also provided to sponsors of continuing education offerings accredited by BUSTI so that they may provide notice of educational offerings. It is also used for BUSTI to mail its newsletter for installers and inspectors, other informational mailings, and notices to specific certified persons in the event of a complaint, as appropriate. The names and contact information are also used by DEP in the event they require an informational mailing.

BUSTI excludes test scores and information generated during ongoing enforcement action from public access. Test scores are provided to the applicants whose test scores they are. By appointment, an applicant may also view the questions and answers that they answered incorrectly provided the review is conducted in our office.

By request of BUSTI, the identities of subjects of complaint investigations and the locations of the complaints are not divulged to the Board until after they initially act on a preliminary case summary. Final agency actions regarding investigations are public information. Any order or consent agreement generated by BUSTI contains notice to the subject that the order or consent agreement will be placed in the subject's personal file.

In addition to paper format, BUSTI uses a part of an electronic database that is password protected to store the personal information identified above for certified individuals. It is part of a larger database used by DEP to track the status of UST facilities. The larger database maintained by DEP also manages information on identification of identities of installers and inspectors who installed or inspected specific UST facilities.

Related data kept by DEP include the names of certified installers and inspectors responsible for performing specific installations, repairs, and inspections on individual facilities.

14. A list of reports, applications and other similar paperwork required to be filed with the agency by the public.

Form	Statutory Authority	Date adopted or amended	Frequency of Filing
BUSTI Forms			
Application, including references and experience sheets.	32 MRSA §§ 10010	October 2009	One time
Exam Answer Sheet	32 MRSA §§10010.3.A and C; 10010.5.A, 10010.6.A	Inspector – 3/2011 Initial Inst. – 8/2007 Final– 10/2010	One time for each exam, if passing.
Apprentice Installation	32 MRSA §10010.3-A.	May 2009	As necessary to document field experience required for final certification
Apprentice Removal	32 MRSA §10010.3-A.	March 2008	One time
Variance Application	32 MRSA §10010.3-A.	May 1993	One time
Continuing Ed. Credit Request	32 MRSA §10014.3	February 2011	As credit is requested.
Recertification application	32 MRSA §10014.1	December 2009	Every two (2) years.
Continuing Education Certificates	32 MRSA §10014.3	Provided by education's sponsor	As credit is obtained.
Responses to complaint notices	32 MRSA §10015.1	By unique letter	As complaints occur.
DEP Forms			
Certificate of Proper Installation	38 MRSA §563.8	April 2011	Upon every installation, upgrade, or repair.
Removal Form	38 MRSA §§ 566-A.2 and 5.	April 2011	Upon every removal.
Inspection Form	38 MRSA §563.9	February 2010	Upon every annual inspection.

Figure 1. Source of Motor Fuel Underground Storage Facility Leaks: 2007 to 2010

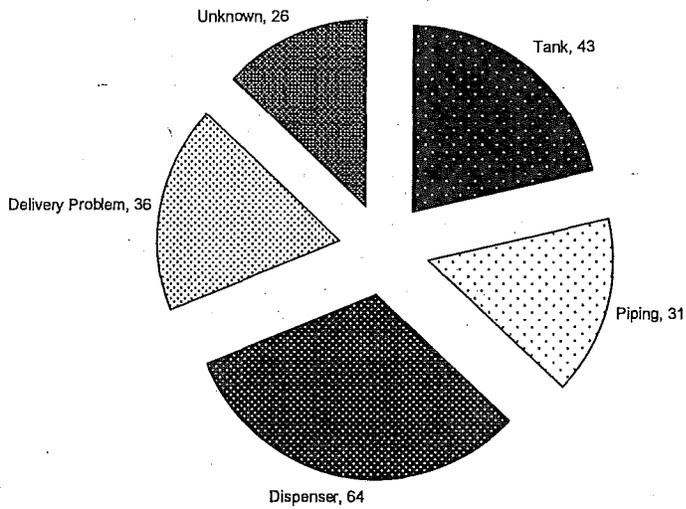


Figure 2. Persons certified as underground tank installers and inspectors

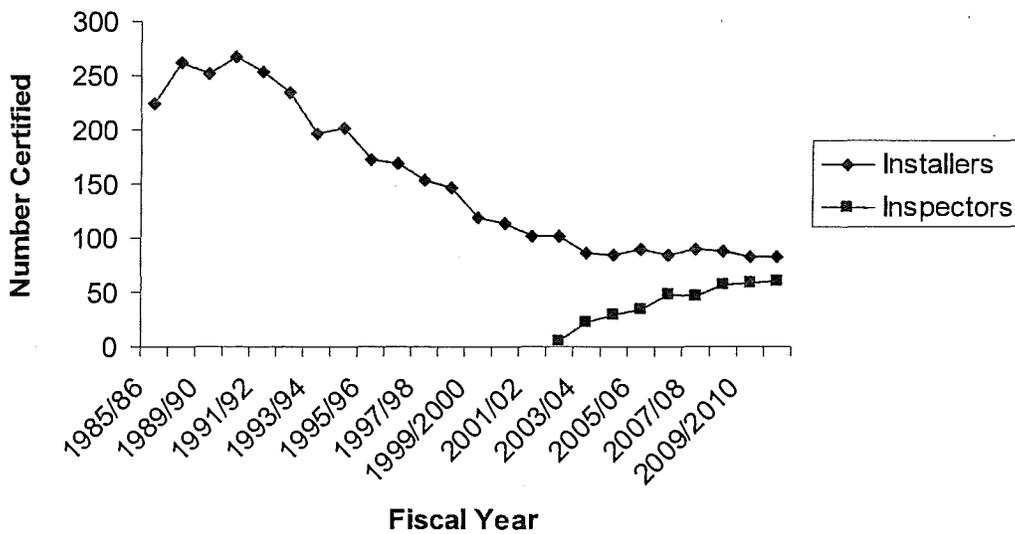


Figure 3. Alleged Violations Investigated by BUSTI

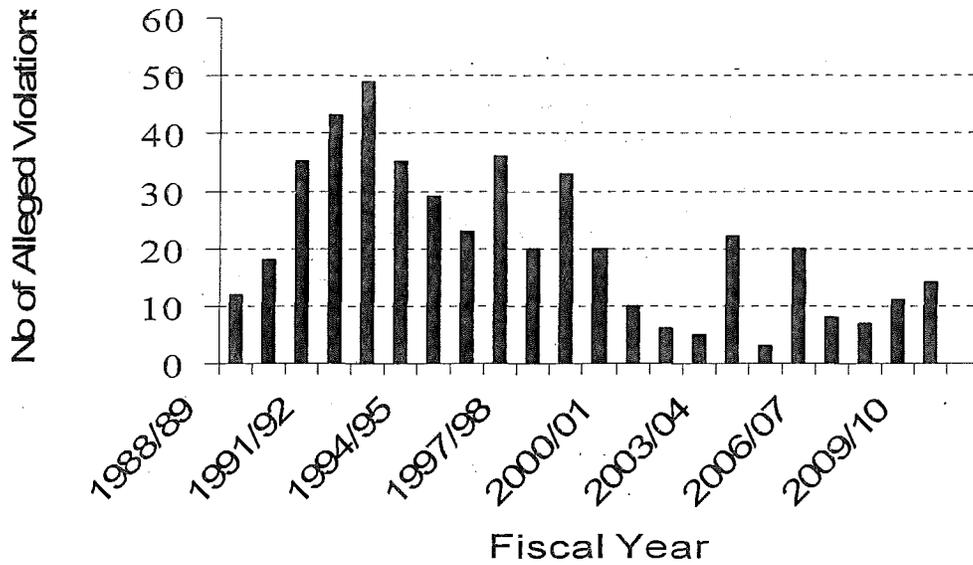


Figure 4. Programs Accredited by BUSTI for Continuing Education

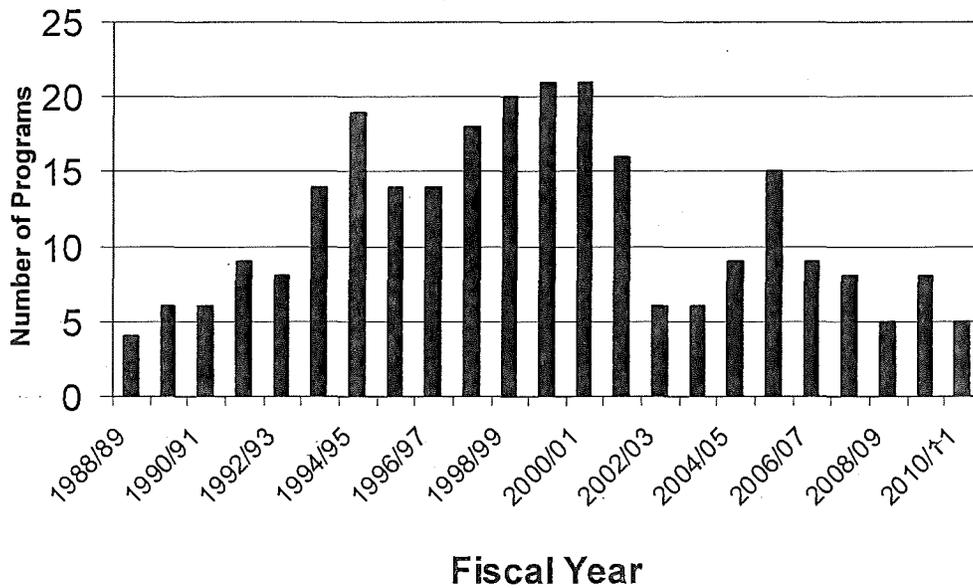


Figure 5. Organization of Staff to the Board of Underground Storage Tank Installers in Relation to the Department of Environmental Protection

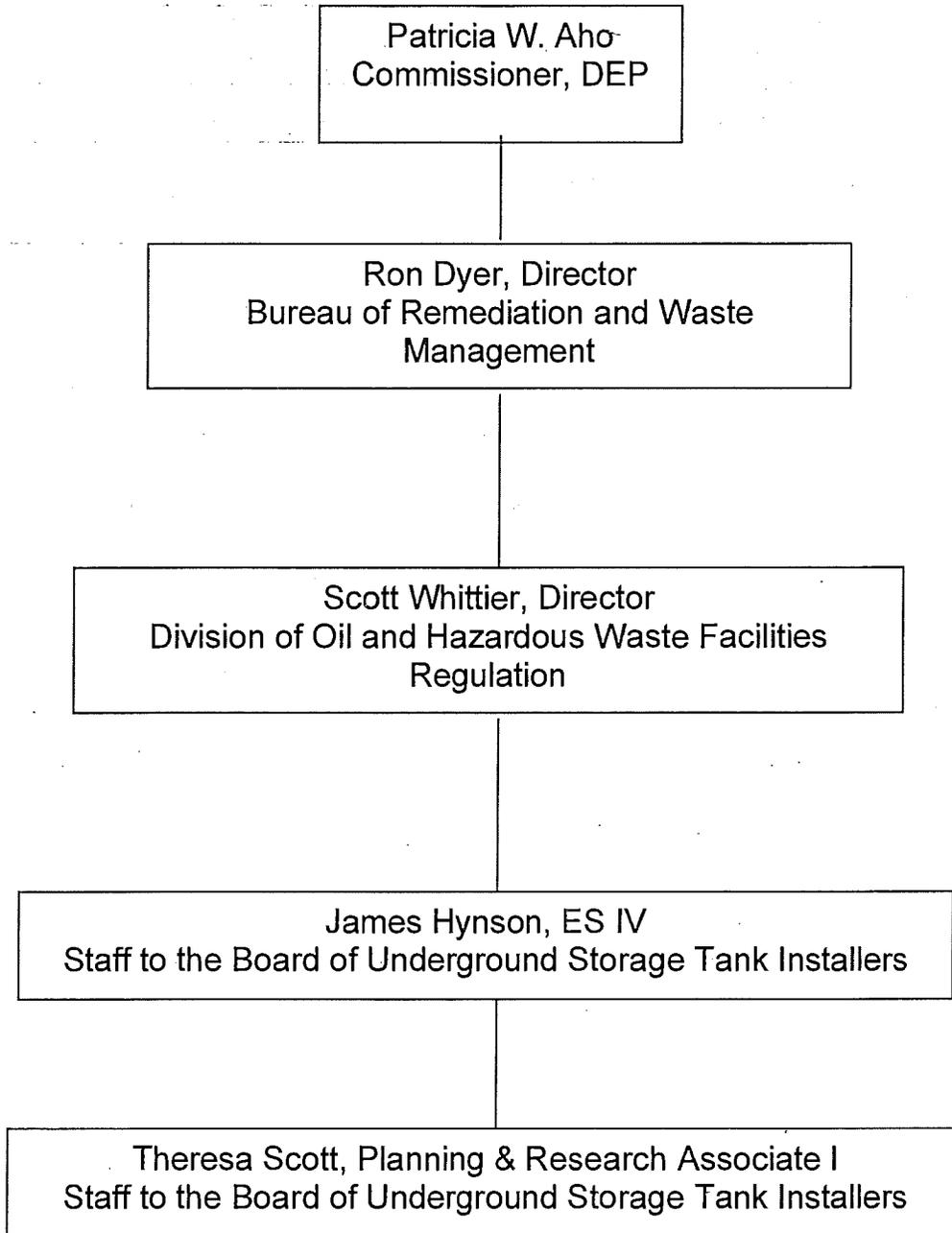


Figure 6. Organization of the Board of Underground Storage Tank Installers and its Staff.

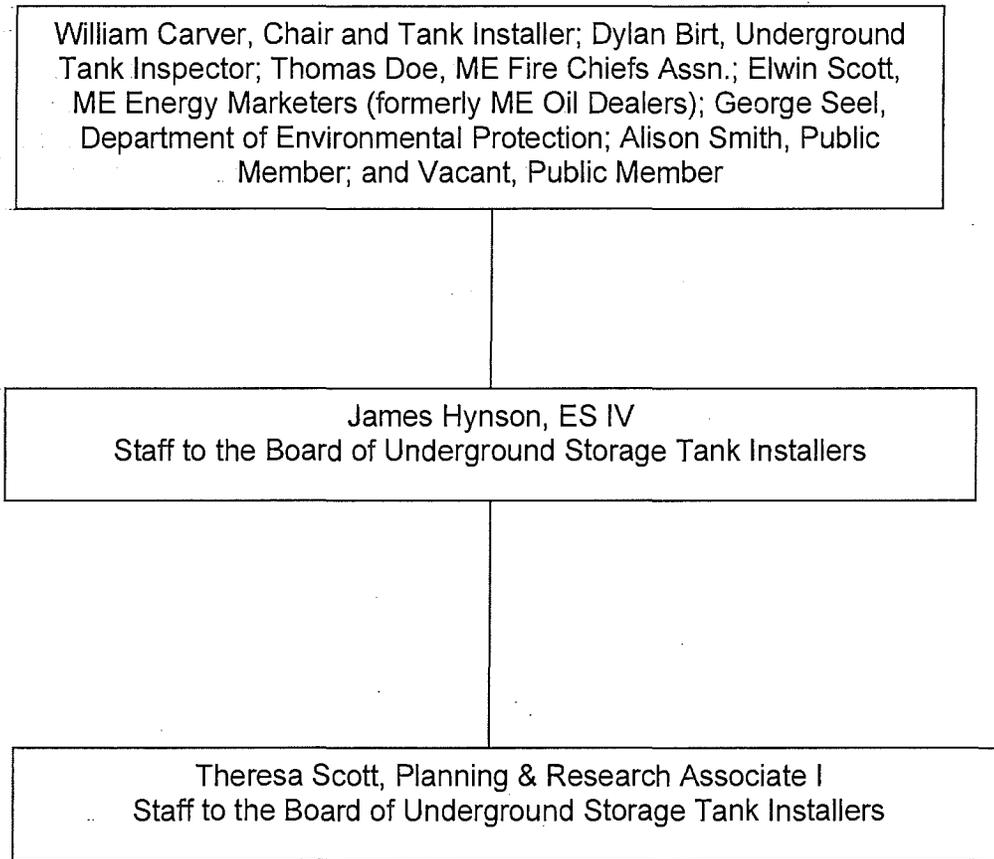
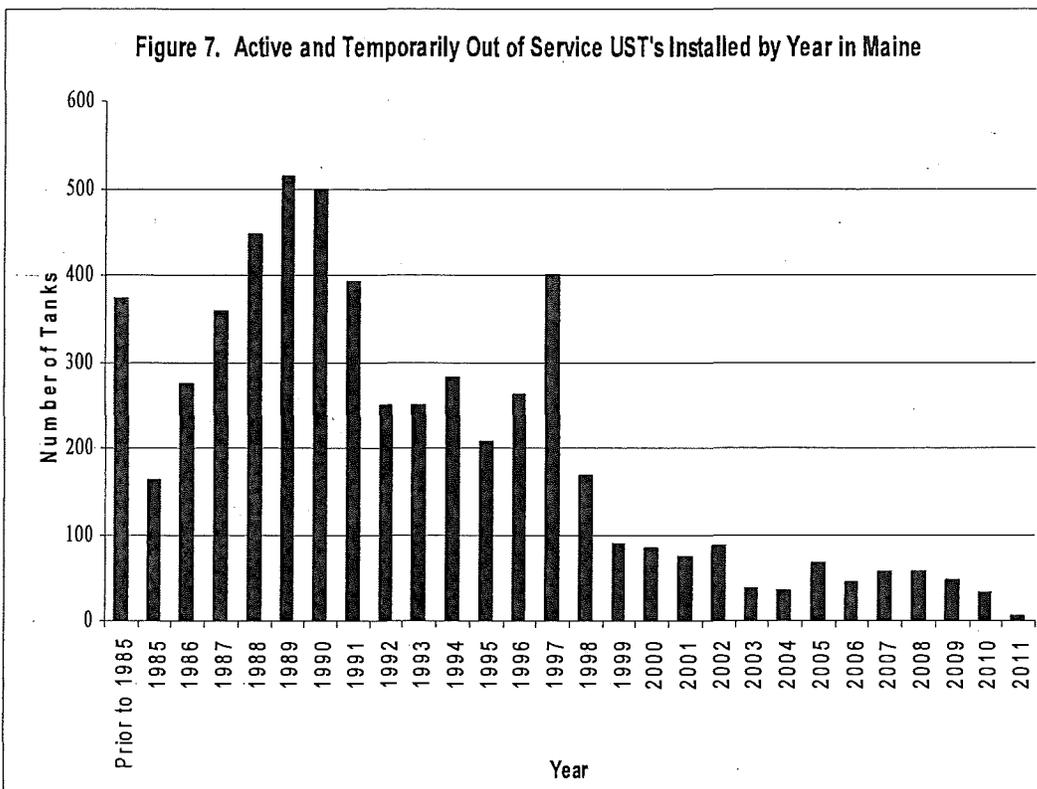


Figure 7. Active and Temporarily Out of Service UST's Installed by Year in Maine



Appendix A. Enabling Legislation for the Board of Underground Storage Tank Installers

Maine Revised Statute Title 32, Chapter 104-A: UNDERGROUND OIL STORAGE TANK INSTALLERS

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32 §10001. DECLARATION OF PURPOSE

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to ensure the highest degree of professional conduct on the part of underground oil storage tank installers and inspectors and to ensure the availability of underground oil storage tank installations and inspections of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil storage tank installation and inspection services. [2001, c. 231, §4 (AMD).]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §2 (AMD). 1997, c. 364, §2 (AMD). 2001, c. 231, §4 (AMD).

32 §10002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 496, Pt. A, §2 (NEW).]

1.B oard. "Board" means the Board of Underground Oil Storage Tank Installers established under this chapter.

[1985, c. 496, Pt. A, §2 (NEW) .]

1-A. Class I liquid. "Class I liquid" means any liquid having a flash point below 100° Fahrenheit.

[1989, c. 845, §4 (NEW) .]

2. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

[1985, c. 496, Pt. A, §2 (NEW) .]

3. Department. "Department" means the Department of Environmental Protection.

[1985, c. 496, Pt. A, §2 (NEW) .]

3-A. Hazardous substance.

[1997, c. 364, §3 (RP) .]

3-B. Gasoline. "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.

[1989, c. 312, §1 (NEW) .]

4. Oil. "Oil" means oil, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

[1985, c. 496, Pt. A, §2 (NEW) .]

5. Public member. "Public member" means that that person may not be a past or present member of the occupation or profession regulated by the board, may not have been professionally affiliated with that occupation or profession for a period of 5 years preceding appointment to the board and may not have had in the past a material or financial interest in either the provision of services provided by this occupation or profession or an activity directly related to this occupation or profession, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment.

[1985, c. 496, Pt. A, §2 (NEW) .]

5-A. Underground hazardous substance storage tank.

[1997, c. 364, §3 (RP) .]

5-B. Underground hazardous substance storage tank installer.

[1997, c. 364, §3 (RP) .]

5-C. Underground gasoline storage tank. "Underground gasoline storage tank" means a tank or container, 10% or more of which is underground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of gasoline. The term does not include tanks or containers that are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

[1989, c. 312, §1 (NEW) .]

5-D. Underground gasoline storage tank remover. "Underground gasoline storage tank remover" means a person certified under this chapter to remove underground gasoline storage tanks.

[1989, c. 312, §1 (NEW) .]

6. Underground oil storage tank. "Underground oil storage tank," for purposes of this chapter, means any tank or container, 10% or more of which is beneath the surface of the ground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of oil as defined in subsection 4. The term "underground oil storage tank" does not include tanks or containers, associated piping or dispensing facilities that are located in an underground area if these tanks or containers, associated piping or dispensing facilities are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

[1985, c. 496, Pt. A, §2 (NEW) .]

6-A. Underground oil storage tank inspector. "Underground oil storage tank inspector" means a person certified under this chapter to inspect underground oil storage tanks.

[2001, c. 231, §5 (NEW) .]

7. Underground oil storage tank installer. "Underground oil storage tank installer" means a person certified under this chapter to install underground oil storage tanks and to remove underground oil storage tanks.

[1987, c. 491, §2 (AMD) .]

SECTION HISTORY

1985, c. 496, SA2 (NEW). 1987, c. 410, §3 (AMD). 1987, c. 491, §2 (AMD). 1989, c. 312, §1 (AMD). 1989, c. 845, §4 (AMD). 1997, c. 364, §3 (AMD). 2001, c. 231, §5 (AMD).

32 §10003. BOARD OF UNDERGROUND STORAGE TANK INSTALLERS; ESTABLISHMENT;

COMPENSATION

1.E establishment and membership. There is established within the Department of Environmental Protection, the Board of Underground Storage Tank Installers. The board consists of 7 members appointed by the Governor as follows: one from the Department of Environmental Protection; one from the Maine Oil Dealer's Association; one underground oil storage tank installer; one from the Maine Chamber and Business Alliance or an underground oil storage tank inspector or a 2nd underground oil storage tank installer; one from the Maine Fire Chiefs Association; and 2 public members.

[2003, c. 551, §3 (AMD) .]

2.T erms of appointment. The Governor, within 60 days following the effective date of this chapter, shall appoint 3 board members for terms of one year, 3 for terms of 2 years and one for a term of 3 years. The Governor shall appoint by October 1, 1987, a board member from the Maine Chamber of Commerce and Industry for an initial term of one year. Appointments made thereafter are for 3-year terms, but no person except the representative from the Department of Environmental Protection may be appointed to serve more than 2 consecutive terms at any one time. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar days of the year in which they are appointed, before commencing the terms prescribed by this section.

Any member of the board may be removed from office for cause by the Governor. A member may not serve more than 2 full successive terms provided that, for this purpose only, a period actually served that exceeds 1/2 of the 3-year term is deemed a full term.

[1991, c. 499, §7 (AMD) .]

3. Meetings. The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Other meetings may be convened at the call of the chairman or the written request of any 3 board members. A majority of the members of the board shall constitute a quorum for all purposes.

[1987, c. 410, §4 (AMD) .]

4. Compensation. Members of the board shall receive no compensation for their services, but are entitled to expenses on the same basis as provided for state employees.

[1987, c. 410, §4 (AMD) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §4 (AMD). 1989, c. 845, §5 (AMD). 1991, c. 499, §7 (AMD). 1997, c. 364, §4 (AMD). 2001, c. 231, §6 (AMD). 2001, c. 626, §9 (AMD). 2003, c. 551, §3 (AMD).

32 §10004. BOARD OF UNDERGROUND OIL STORAGE TANK INSTALLERS; POWERS AND DUTIES

1. Powers. The board shall administer and enforce this chapter and evaluate the qualifications of applicants for certification. The board may issue subpoenas, examine witnesses, administer oaths and may investigate or cause to be investigated any complaints made to it or any cases of noncompliance with or violation of this chapter.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Rules. The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not

limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil storage tank installation, inspection and removal and underground gasoline storage tank removal.

[2001, c. 231, §7 (AMD) .]

3. Hearings. Hearings may be conducted by the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of certification, or as otherwise deemed necessary to the fulfillment of its responsibilities under this chapter. Hearings shall be conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable.

[1985, c. 496, Pt. A, §2 (NEW) .]

4. Records. The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions.

[1985, c. 496, Pt. A, §2 (NEW) .]

5. Contracts. The board may enter into contracts to carry out its responsibilities under this chapter.

[1985, c. 496, Pt. A, §2 (NEW) .]

6. Reports. No later than August 1st of each year, the board shall submit to the commissioner, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with such comments and recommendations as the commissioner deems essential.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §5 (AMD). 1989, c. 312, §2 (AMD). 1997, c. 364, §5 (AMD). 2001, c. 231, §7 (AMD).

32 §10005. BOARD OF UNDERGROUND STORAGE TANK INSTALLERS; ADMINISTRATIVE PROVISIONS

1. Officers. The board shall appoint a secretary and may appoint other officers as it determines necessary.

[1987, c. 410, §6 (AMD) .]

2. Employees. With the advice of the board, the commissioner may appoint, subject to the Civil Service Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the department and under the administrative and supervisory direction of the commissioner.

[1985, c. 785, Pt. B, §147 (AMD) .]

3.B budget. The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1985, c. 785, §B147 (AMD). 1987, c. 410, §6 (AMD).

32 §10006. CERTIFICATION

1. Certification required. A person may not practice, or profess to practice, as an underground oil storage tank installer or underground oil storage tank inspector in this State or use the words "underground oil storage tank installer," "underground oil storage tank inspector" or other words or letters to indicate that the person using the words or letters is a certified underground oil storage tank installer or underground oil storage tank inspector unless that person is certified in accordance with this chapter.

[2007, c. 292, §1 (AMD) .]

2.I individual. Only an individual may be certified under this chapter.

[1985, c. 496, Pt. A, §2 (NEW) .]

3. Proper underground oil storage tank installer certification class required. A person may not install or advertise to install underground oil storage tanks or remove, pursuant to Title 38, section 566-A, subsection 5, underground tanks used for the storage of Class 1 liquids unless the person has been certified in accordance with this subsection.

A. [1991, c. 817, §1 (RP) .]

B. An underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed underground oil storage tanks and impressed-current cathodically protected tanks. [2007, c. 292, §1 (AMD) .]

C. [2007, c. 292, §1 (RP) .]

D. [1991, c. 817, §3 (RP) .]

E. [2007, c. 292, §1 (RP) .]

[2007, c. 292, §1 (AMD) .]

4. Proper underground gasoline storage tank remover certification class required.

[2007, c. 292, §1 (RP) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §7 (AMD). 1989, c. 312, §§3,4 (AMD). 1989, c. 845, §6 (AMD). 1991, c. 817, §§1-4 (AMD). 1997, c. 364, §6 (AMD). 2001, c. 231, §8 (AMD). 2007, c. 292, §1 (AMD).

32 §10007. PERSONS AND PRACTICES EXEMPT

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of: [1985, c. 496, Pt. A, §2 (NEW) .]

1. Certified persons. Any person certified in this State by any other law from engaging in the profession or occupation for which he is certified.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW) .

32 §10008. RECIPROCITY

A person who is a resident of the State and has been certified in another state as an underground oil storage tank installer or underground oil storage tank inspector may, upon payment of a fee as established under section 10012, obtain a certification as an underground oil storage tank installer or underground oil storage tank inspector, if that person submits satisfactory evidence of certification as an underground oil storage tank installer or underground oil storage tank inspector in another state under qualifications equivalent to those specified in this chapter. [2001, c. 231, §9 (AMD) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW) . 1987, c. 410, §8 (AMD) . 1997, c. 364, §7 (AMD) . 2001, c. 231, §9 (AMD) .

32 §10009. CERTIFICATION REQUIREMENTS FOR PERSONS WORKING AS UNDERGROUND HAZARDOUS SUBSTANCE STORAGE TANK INSTALLERS

(REPEALED)

SECTION HISTORY

1985, c. 496, §A2 (NEW) . 1985, c. 763, §A95 (AMD) . 1987, c. 410, §9 (RPR) . 1989, c. 312, §5 (RP) .

32 §10010. REQUIREMENTS FOR CERTIFICATION

An applicant for certification as an underground oil storage tank installer or an underground oil storage tank inspector must file a written application provided by the board, showing to the satisfaction of the board that that person meets the following requirements. [2007, c. 292, §2 (AMD) .]

1. Residence. An applicant need not be a resident of this State.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Character. An applicant shall have demonstrated ethical practice.

[1985, c. 496, Pt. A, §2 (NEW) .]

3. Education and examination for certification of new underground oil storage tank installers.

An applicant must meet the following requirements:

A. Passage of an initial written or oral examination based on laws outlined in and any rules promulgated under Title 38, chapter 3, subchapter II-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks, any regulations promulgated by the federal Environmental Protection Agency regarding the installation and removal of underground oil storage tanks and any technical concepts necessary to understand and implement those laws, rules or regulations; [1989, c. 312, §7 (RPR); 1989, c. 845, §7 (AMD) .]

B. Successful completion of an apprenticeship in accordance with this section and under the direct supervision of an underground oil storage tank installer ; and [2007, c. 292, §3 (AMD) .]

C. Passage of a final written or oral examination that is based on the laws outlined in and rules adopted under Title 38, chapter 3, subchapter 2-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks. [2007, c. 292, §4 (AMD) .]

[2007, c. 292, §§3, 4 (AMD) .]

3-A. Apprenticeship requirements for new underground oil storage tank installers. An applicant for certification as an underground oil storage tank installer must meet the following apprenticeship requirements before being certified.

A. [1991, c. 817, §5 (RP) .]

B. To be eligible to take the final examination for a certification, the applicant must provide documentation of field experience, under the apprenticeship of an underground oil storage tank installer, sufficient to demonstrate expertise in the installation and removal of tanks and piping. The board shall specify, in the rules adopted pursuant to paragraph D, the nature and extent of field experience required to demonstrate this expertise. [2007, c. 292, §5 (AMD) .]

C. [2007, c. 292, §6 (RP) .]

D. The board shall adopt rules to administer this section and to provide a variance to the apprenticeship requirements under paragraph B if the applicant can satisfactorily demonstrate training and experience comparable to completion of an apprenticeship. [2007, c. 292, §7 (AMD) .]

[2007, c. 292, §§5-7 (AMD) .]

4.E ducation and examination for certification of new underground hazardous substance storage tank installers.

[1997, c. 364, §9 (RP) .]

5.E ducation and examination for certification of underground gasoline storage tank removers.

[2007, c. 292, §8 (RP) .]

6.E ducation and examination for certification of underground oil storage tank inspectors. An applicant for certification as an underground oil storage tank inspector must:

A. Pass a written or oral examination prepared by the board or such other exam as the board may deem equivalent that demonstrates the applicant's understanding of the following:

- (1) The underground oil storage tank requirements of Title 38, chapter 3, subchapter II-B;
- (2) Any rules regarding underground oil storage tanks adopted pursuant to Title 38, chapter 3, subchapter II-B by the Board of Environmental Protection;
- (3) Any regulations regarding underground oil storage promulgated by the federal Environmental Protection Agency; and
- (4) Any technical concepts necessary to understand and implement state and federal laws, rules and regulations regarding underground oil storage tanks; [2001, c. 231, §11 (NEW) .]

B. Demonstrate valid certification or licensing by manufacturers of ancillary equipment that the applicant intends to inspect if the manufacturers require any such certification to maintain equipment warranties; and [2001, c. 231, §11 (NEW) .]

C. If the applicant intends to inspect cathodic protection systems, demonstrate valid, nationally recognized certification or licensing that meets the requirements for a "cathodic protection tester" as specified in 40 Code of Federal Regulations, Section 280.12. [2001, c. 231, §11 (NEW).]

[2001, c. 231, §11 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §§10-12 (AMD). 1989, c. 312, §§6-10 (AMD). 1989, c. 845, §§7-10 (AMD). 1991, c. 817, §5 (AMD). 1997, c. 364, §§8-10 (AMD). 2001, c. 231, §§10,11 (AMD). 2007, c. 292, §§2 - 8 (AMD).

32 §10010-A. CERTIFICATION REQUIREMENTS REGARDING ON-SITE REMOVAL OF UNDERGROUND OIL STORAGE TANK USED FOR STORAGE OF MOTOR FUEL UNDER SUPERVISION OF DESIGNATED REPRESENTATIVE OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

To provide for the completion of the on-site removal of an underground oil storage tank used for the storage of motor fuel under the supervision of a designated representative of the Department of Environmental Protection, the Board of Underground Storage Tank Installers may issue a provisional certificate valid for no more than 6 months after issuance to tank removers who have successfully completed the examination requirements pursuant to section 10010. [1997, c. 364, §11 (AMD).]

When the board determines that reasonable extenuating circumstances prevent the administration or completion of an on-site removal within the 6-month provisional certification period, it may grant one renewal of a provisional certificate for a specific limited time not to exceed 3 months. [1997, c. 364, §11 (AMD).]

The board shall establish a written set of criteria to be used as a checklist by the representative of the Department of Environmental Protection designated to supervise the on-site removal to ensure that each removal is evaluated consistently and equitably. [1997, c. 364, §11 (AMD).]

SECTION HISTORY

1985, c. 763, §A96 (NEW). 1987, c. 410, §13 (AMD). 1989, c. 312, §11 (AMD). 1989, c. 845, §11 (AMD). 1997, c. 364, §11 (AMD).

32 §10010-B. CERTIFICATION OF EMPLOYEES OF THE DEPARTMENT

Employees of the Department of Environmental Protection may be certified for the purposes of carrying out their assigned duties and responsibilities but remain subject to the conditions set forth in Title 5, section 18. [1985, c. 763, Pt. A, §96 (NEW).]

SECTION HISTORY

1985, c. 763, §A96 (NEW).

32 §10010-C. EXAMINATION OF FIRE-FIGHTING PERSONNEL

(REPEALED)

SECTION HISTORY

1991, c. 817, §6 (NEW). 2007, c. 292, §9 (RP).

32 §10011. EXAMINATION FOR CERTIFICATION

1. Requirements; fees. Only a person satisfying the requirements of section 10010, subsections 1 and 2 may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by section 10012. A person who fails either part of the applicable examination specified in section 10010, subsection 3 or 6 may apply for reexamination upon payment of the prescribed fee.

[2007, c. 292, §10 (AMD) .]

2. Content. The written examination must test the applicant's knowledge of the skills and knowledge relating to storage tank installation, inspection or removal and such other subjects as the board requires to determine the applicant's fitness to practice. The board shall approve examinations required by this chapter for underground oil storage tank installers, underground gasoline storage tank removers and underground oil storage tank inspectors and establish standards for an acceptable performance.

[2001, c. 231, §13 (AMD) .]

3. Time and place. Applicants for certification shall be examined at a time and place and under such supervision as the board requires. Examinations shall be given at least twice each year at such places as the board determines.

The board shall give reasonable public notice of these examinations in accordance with its rules.

[1985, c. 496, Pt. A, §2 (NEW) .]

4. Scores; review. Applicants may obtain their examination scores and may review their papers in accordance with rules as the board may establish.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §14 (AMD). 1989, c. 312, §12 (AMD). 1991, c. 817, §7 (AMD). 1997, c. 364, §§12,13 (AMD). 2001, c. 231, §§12,13 (AMD). 2007, c. 292, §10 (AMD).

32 §10012. FEES

1. Amount. Fees may be established by the board in amounts which are reasonable and necessary for their respective purposes.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Disposal of fees and civil penalties. All fees received by the board under subsection 1 and civil penalties imposed under sections 10015 or 10016 must be paid to the Treasurer of State to be deposited into the Ground Water Oil Clean-up Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees and civil penalties does not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

[2007, c. 497, §1 (AMD) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1985, c. 626, §1 (AMD). 1987, c. 410, §15 (AMD). 1989, c. 312, §13 (AMD). 1991, c. 499, §8 (AMD). 1997, c. 364, §14 (AMD). 2001, c. 231, §14 (AMD). 2007, c. 497, §1 (AMD).

32 §10013. ISSUANCE OF CERTIFICATION

The board shall issue a certificate to any person who meets the requirements of this chapter upon payment of the prescribed certification fee. [1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

1985, c. 496, §A2 (NEW).

32 §10014. RENEWAL OF CERTIFICATION

1.B iennial renewal. Any certificate issued under this chapter is subject to biennial renewal and shall expire, unless renewed in the manner prescribed by the rules of the board, upon the payment of a renewal fee. Certificates may be renewed up to 30 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than 30 days after the certification renewal date is subject to all requirements governing new applicants under this chapter, except that the board may, in its discretion, giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of that expiration.

[1985, c. 496, Pt. A, §2 (NEW) .]

2.I nactive status. Upon request, the board shall grant inactive status to certified persons who do not practice or present themselves as underground oil tank installers, underground gasoline storage tank removers or underground oil storage tank inspectors and maintain any continuing competency requirements established by the board.

[2001, c. 231, §15 (AMD) .]

3. Continuing competency. Each certification renewal shall be accompanied with evidence of continuing competencies as determined by the board.

[1985, c. 496, Pt. A, §2 (NEW) .].

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §16 (AMD). 1989, c. 312, §14 (AMD). 1997, c. 364, §15 (AMD). 2001, c. 231, §15 (AMD).

32 §10015. INVESTIGATION; REFUSAL OF LICENSE OR RENEWAL; DISCIPLINARY ACTION

1. Complaints; investigations. The board shall investigate or cause to be investigated a complaint made on its own motion or on written complaint filed with the board and all cases of noncompliance with or violation of this chapter or of any rules adopted by the board.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Grounds for disciplinary action. The following are grounds for an action to modify, reclassify, suspend, revoke or refuse to issue or renew a certificate or impose a civil penalty:

- A. The practice of any fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered within the scope of the certificate issued; [1985, c. 496, Pt. A, §2 (NEW) .]
- B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil storage tank installation or removal, underground gasoline storage tank removal or underground oil storage tank inspection or violation of any standard of professional behavior established by the board; [2001, c. 231, §16 (AMD) .]
- C. Subject to the limitation of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or [1989, c. 845, §12 (AMD) .]
- D. Any violation of this chapter or any rule adopted by the board. [1985, c. 496, Pt. A, §2 (NEW) .]

[2007, c. 292, §11 (AMD) .]

2-A. Disciplinary action authority. For each violation of applicable laws, rules or conditions of certification, the board may take one or more of the following actions:

- A. Issue warnings, censures or reprimands to a certified person or applicant. Each warning, censure and reprimand issued must be based on violations of different applicable laws, rules, or conditions of certification or on separate instances of actionable conduct or activity; [1989, c. 845, §13 (NEW) .]
- B. Suspend a certificate for up to 90 days for each violation or instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and, in total, may not exceed one year. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certified person's record; [1989, c. 845, §13 (NEW) .]
- C. Impose civil penalties of up to \$1,500 for each violation or each instance of actionable conduct or activity; [1989, c. 845, §13 (NEW) .]
- D. Impose conditions of probation upon an applicant or certified person. Probation may run for such time period as the board determines appropriate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or certified person; and such other conditions as the board determines appropriate. Cost incurred in the performance of terms of probation is borne by the applicant or certified person. Failure to comply with the conditions of probation is grounds for disciplinary action against a certificate holder; [1989, c. 845, §13 (NEW) .]
- E. Suspend or revoke a certificate pursuant to Title 5, section 10004; and [1989, c. 845, §13 (NEW) .]
- F. Refuse to issue or renew a certificate. [1989, c. 845, §13 (NEW) .]

[1989, c. 845, §13 (NEW) .]

2-B. Consent agreements. The board may execute a consent agreement which resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant, the board and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if in the District Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

[1989, c. 845, §13 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2-C. Surrender of certificate. The board may require surrender of certificates. In order for a certified person's surrender of a certificate to be effective, a surrender must first be accepted by vote of the board. The board may refuse to accept surrender of the certificate if the certified person is under investigation or is the subject of a pending complaint or proceeding unless a consent agreement is first entered into pursuant to this chapter.

[1989, c. 845, §13 (NEW) .]

3. Criminal penalty. Any person who violates a provision of this chapter or any lawful order or rule adopted by the board is guilty of a Class E crime.

[1985, c. 496, Pt. A, §2 (NEW) .]

4. Injunction. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have been or may be instituted in the District Court or whether criminal proceedings have been or may be instituted.

[1985, c. 496, Pt. A, §2 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. Reinstatement. An application for reinstatement may be made to the board one year from the date of revocation of a certificate. The board may accept or reject the application and hold a hearing to consider the reinstatement.

[1985, c. 496, Pt. A, §2 (NEW) .]

6. Limitation of actions. An action by the board against a certified person for any violation of this chapter relating to a tank or equipment installed on or after September 16, 1991 must be commenced within 3 years after the violation is discovered, but the action may not be commenced more than 15 years after installation of the storage tank or equipment that is the subject of the violation.

[1999, c. 714, §1 (NEW) .]

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the Superior Court. Civil penalties accrue to the Ground Water Oil Clean-up Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7, notwithstanding any other provision of law. [2005, c. 330, §2 (AMD).]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §17 (AMD). 1989, c. 312, §15 (AMD). 1989, c. 845, §§12-14 (AMD). 1997, c. 364, §16 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 1999, c. 714, §1 (AMD). 2001, c. 231, §16 (AMD). 2005, c. 330, §2 (AMD). 2007, c. 292, §11 (AMD).

32 §10016. UNCERTIFIED PRACTICE

1. Complaints. The board may receive or initiate complaints of uncertified practice as an underground oil storage tank installer or inspector.

[2007, c. 497, §2 (NEW) .]

2. Investigation. Complaints of uncertified practice under subsection 1 may be investigated by the board, the department or the Attorney General. If sufficient evidence of uncertified practice is uncovered, the evidence must be compiled and presented to the Attorney General or the local district attorney's office for prosecution.

[2007, c. 497, §2 (NEW) .]

3. Criminal penalties. Notwithstanding any other provision of law:

A. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector and intentionally, knowingly or recklessly fails to obtain certification as required by this chapter or intentionally, knowingly or recklessly practices or represents to the public that the person is authorized to practice after the certification required by this chapter has expired or been suspended or revoked commits a Class E crime; and [2007, c. 497, §2 (NEW) .]

B. A person who violates paragraph A when the person has a prior conviction under this subsection commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence, except that, for purposes of this paragraph, the date of the prior conviction must precede the commission of the offense being enhanced by no more than 3 years. [2007, c. 497, §2 (NEW) .]

[2007, c. 497, §2 (NEW) .]

4. Civil violations. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector without first obtaining certification as required by this chapter or after the certification has expired or has been suspended or revoked commits a civil violation for which a fine of not less than \$100 and not more than \$2,000 for each violation may be adjudged. An action under this subsection may be brought in District Court or Superior Court.

[2007, c. 497, §2 (NEW) .]

5. Injunctions. The Attorney General may bring an action in District Court or Superior Court to enjoin a person from violating subsection 4 and to restore to a person who has suffered any ascertainable loss by reason of that violation any money or personal or real property that may have been acquired by means of that violation and to compel the return of compensation received for engaging in that unlawful conduct.

A person who violates the terms of an injunction issued under this subsection shall pay to the State a fine of not more than \$10,000 for each violation. In an action under this subsection, when a permanent injunction has been issued, the court may order the person against whom the permanent injunction is issued to pay to the Ground Water Oil Clean-up Fund under Title 38, chapter 3, subchapter 2-B the costs of the investigation of that person by the Attorney General and the costs of suit, including attorney's fees. In an action by the Attorney General brought against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to a person who has suffered any ascertainable loss any money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

[2007, c. 497, §2 (NEW) .]

SECTION HISTORY

2007, c. 497, §2 (NEW) .

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Appendix B. Regulatory Agenda for the Board of Underground Storage Tank
Installers

06

Department of Environmental Protection;
Board of Underground Storage Tank Installers
2011-2012 Regulatory Agenda

AGENCY UMBRELLA-UNIT NUMBER: 06-481

AGENCY NAME: Board of Underground Storage Tank Installers

CONTACT PERSON: James Hynson, Staff to the Board of Underground Storage Tank Installers, c/o DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207 287-7889.

CHAPTER 3: Certification of Underground Oil Tank Installers (Amendments)

STATUTORY BASIS: 32 MRS.A §10010.3-A.B

PURPOSE: This amendment would allow an apprentice to receive credit towards his/her apprenticeship requirement for assisting in the installation of one or more underground storage tanks at motor fuel facilities with submersible pumps and connecting them to existing, compliant piping. The amendment would also provide a mechanism for the apprentice to apply for credit for projects that are not already listed in the rule.

ANTICIPATED SCHEDULE: Fall 2011 -- Spring 2012.

AFFECTED PARTIES: Applicants for certification as underground storage tank installers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated.