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Report to the Legislature Maine DEP SPCC Program

January 15, 2006

I. Introduction

Federal regulations under 40 CFR Part 112 require Spill Prevention Control and Countermeasures (SPCC) plans for aboveground oil storage facilities having a total aboveground storage capacity exceeding 1,320 gallons. These rules were first promulgated in the 1970's under the Clean Water Act, and were most recently revised in July of 2002. The primary focus of the federal regulations is the protection of surface waters rather than groundwater.

The Maine legislature enacted 38 M.R.S.A. § 570-K(5) in March 2002 giving the DEP authority to enforce the federal SPCC requirements for retail, marketing and distribution facilities in Maine. The Maine SPCC program has jurisdiction over facilities such as service stations, bulk plants (i.e. facilities where oil is stored in bulk prior to distribution), marinas, and airports. The state law does not apply to home heating oil tanks or other tanks used to store oil for consumption on the premises. The Maine SPCC Program is administered by the DEP's Bureau of Remediation and Waste Management (BRWM), Division of Technical Services and is staffed by one person.

The law as originally enacted had a sunset date of October 1, 2005, whereby the statute would be repealed and Maine's SPCC program discontinued unless the Maine Legislature acted to remove the sunset date. The Legislature subsequently enacted Public Law Chapter 212 in May of 2005, amending 38 MRSA § 570K(5) to remove the sunset date and make the Maine SPCC program permanent.

The statute, as amended in 2005, requires the DEP to report to the Legislature by January 15, 2006, and on that date every 2 years thereafter, on all activities undertaken by the Department under the provisions of section 570-K(5). The report due January 15, 2006, must include an evaluation of financial consequences for failing to have and implement an SPCC plan in accordance with the federal SPCC regulation. This report is being submitted to satisfy the 2006 reporting requirement.

II. Program Goals

The goals of Maine's SPCC Program are to:

- Protect human health and the environment from the risks associated with oil spills;
- Reduce oil clean-up costs; and
- Protect ground water, surface water and other resources from oil spills at aboveground storage tank (AST) facilities by improving spill prevention and control.

III. Summary of Primary Tasks for SPCC Program, 2003 - 2004

1. *Identify AST facilities in the state that are, or may be, subject to the state's SPCC program.*

One of the first program tasks was to determine the location of facilities subject to the SPCC requirements. A first draft of a state-wide AST list was compiled during the summer of 2003 using four state agency databases. The list currently contains about 390 facilities that appear likely to be subject to the state SPCC program.

2. *Provide educational materials for the regulated AST facilities.*

An SPCC guidance document and model SPCC plans were developed by early 2003 with the assistance of Jacques-Whitford, a consulting firm. The guidance document summarizes the SPCC regulations and other requirements pertaining to AST facilities. In addition, DEP staff developed an SPCC web page devoted to oil AST facilities and posted the web page in June of 2003. The web page is located at: <http://www.state.me.us/dep/rwm/spcc/index.htm>.

3. *Conduct SPCC training sessions for facility owners/operators and consultants.*

SPCC program staff held training seminars in the fall of 2003 at four locations: Portland, Augusta, Bangor and Presque Isle. A total of 181 people attended, including facility owners and operators, consultants and government staff. Topics covered included: the state and federal SPCC requirements, the 2002 changes to the federal SPCC regulations, the basic components of an SPCC plan, and the design and construction of AST facilities for spill prevention and control.

4. *Conduct technical assistance site visits to individual facilities.*

DEP staff visited individual facilities in 2003 and 2004 to provide site-specific recommendations for spill prevention and control, and to facilitate SPCC planning where needed. Nine site visits were conducted in 2003 and 47 in 2004. Fewer than half of the facilities visited in 2003-04 had an SPCC plan (either certified or draft). The most commonly observed problem was lack of or inadequate overfill protection measures for tanks. The second most commonly observed problem was inadequate secondary containment for tanks. Approximately half (54%) of the facilities had underground piping. Of these facilities about two thirds (60%) did not meet the DEP's standards for noncorrosive piping and/or piping leak detection under Chapter 691.

III. Summary of Primary Tasks for SPCC Program, 2005

1. *Maintain and refine the AST list.*

Maintaining and refining the AST list (see Item #1 under 2003/2004 program tasks) is an ongoing program task as information on the list is field checked via SPCC site visits.

Updated information about AST facilities is also obtained from other DEP and state agency staff, State Fire Marshal permitting data and occasionally from the facility owners or operators themselves.

2. *Merge State Fire Marshal AST data into the DEP's tank database.*

Another ongoing database task is to incorporate AST data into the DEP's existing database for underground storage tank (UST) facilities. We plan to enter AST data into the database from two sources: permits issued by the State Fire Marshal's Office (SFMO) and field-verified data from site visits by SPCC program staff.

During 2005, SFMO staff were trained in how to enter data into the DEP tanks database and have started doing this. This winter DEP staff plan to enter tank data obtained through DEP site visits.

Long standing technical issues with the DEP's tank database has hampered the SFMO/DEP data merger. DEP SPCC program staff meet monthly with staff overseeing the DEP tanks database to discuss issues and problems with the database. These issues have not all been resolved to date, and the DEP may contract with an outside consultant to rectify the database problems. Some of the problems, among others, is the inability to cross-reference SFMO permit and DEP registration numbers for a given facility, inability to enter data into some fields, and printed reports listing ASTs as USTs.

3. *Conduct technical assistance site visits to individual facilities.*

DEP staff continued to visit individual facilities in 2005 to provide technical assistance for spill prevention and control, to facilitate SPCC planning where needed, and to enforce the DEP's rules for underground piping where necessary. Fifty-five site visits were conducted in 2005. Summary data from the 2005 SPCC field season are presented under Section IV below.

4. *Proposed legislation regarding underground piping at AST facilities.*

Over the course of the 2003 – 05 field seasons, SPCC program staff have observed that about a third of the AST facilities with underground piping are in non-compliance with DEP rules, either because the piping is single-walled and/or because it lacks any form of leak detection. Underground piping at oil storage facilities is regulated under Chapter 691 of the DEP rules. Chapter 691 currently requires that the piping be of cathodically protected steel, fiberglass, or other noncorrosive material; be double-walled; and have continuous (electronic) leak detection. In addition, piping in a pressurized pump system, typically operated under much greater pressure than a suction pump system, is required to be equipped with line leak detectors designed to reduce product flow when there is a leak of 3 gallons or more per hour.

There is one notable loophole in the piping requirements for AST facilities. Underground piping installed prior to June 24, 1991, the effective date of section

570-K(3), is not required to have any leak detection until and unless it is replaced, and there is no replacement schedule mandated by statute. As a result, some older underground piping at AST facilities may operate without leak detection until a leak is discovered, at which point it then must be replaced and brought in compliance with all the current requirements of Chapter 691.

The DEP is concerned that this regulatory loophole allows piping leaks at older AST facilities to go undiscovered, thereby increasing the environmental consequences of the leaks and the costs of cleaning them up. We met with representatives of the Maine Oil Dealers Association (MODA) in March of 2005 to discuss our concerns, to present some conceptual ideas for legislation to address this issue, and to hear MODA's views. This was followed by a second meeting in June with representatives from a wider group of interested parties, including municipalities, the Maine Department of Transportation, private motor fleets, marinas, and airports.

Informed by these two meetings, DEP staff drafted proposed legislation to require all AST facilities having underground piping installed prior to June 24, 1991, without leak detection to be brought into full compliance with the leak detection requirements of Chapter 691 by January 1, 2011. The proposed legislation is limited to motor fuel facilities. This segment of the AST community poses the highest risk to groundwater and drinking water supplies due to the nature of the product stored (e.g., gasoline). Motor fuels, as opposed to heavier oil types, are more toxic, can more quickly contaminate a large area when spilled and generally are more costly to clean up. They are also more likely to be stored, especially at retail facilities, in close proximity to public and private wells.

The proposed legislation, a copy of which is attached as Appendix A, also requires AST facilities with underground piping to be registered with the DEP if the facility will be used to store motor fuel and requires the facility owner to submit annual underground piping inspection reports. The legislation has been introduced for consideration during the Second Session of the 122nd Maine Legislature.

6. *Oil Spill Reporting Survey & Focus Group*

During one of the work sessions in early 2005 to consider legislation proposing to remove the sunset date for Maine's SPCC program, State Representative Tom Saviello raised the issue of oil spill reporting requirements in the State of Maine. Rep. Saviello suggested considering less stringent spill reporting requirements for AST facilities in Maine having an SPCC plan in place in compliance with the federal regulations under 40 CFR Part 112. As a result of this discussion, the chairpersons of the Natural Resources Committee requested that DEP staff convene a focus group to review this issue, and report back to the Committee by February 15, 2006, with findings and recommendations on this issue.

As a first step in this task, the DEP staff conducted a survey of thirteen states (including Maine) and the U.S. Environmental Protection Agency (EPA) regarding their oil spill reporting requirements. DEP subsequently convened a group of interested parties to discuss the issue of oil spill reporting and possible alternative regulatory proposals, including Rep. Saviello's. The Department is preparing a detailed report of its findings and recommendations for presentation to the Natural Resources Committee by February 15, 2006.

7. *DEP Tanks Newsletter*

The DEP has historically issued a semi-annual newsletter titled "The Maine Installer" geared towards UST facility owners, operators and Certified Tank Installers. The scope of the newsletter was broadened in the spring, 2005 issue to include AST facilities. The name of the newsletter has been changed to "Tanks in Maine" to reflect the expanded scope. SPCC program staff contributed articles on the SPCC requirements and related topics for both 2005 issues of the newsletter.

8. *Requests for Information*

SPCC program staff respond to telephone and e-mail requests from other agency staff, facility owners/managers, consultants and the general public seeking information pertaining to AST facilities and spill prevention/control, and other topics such as home heating oil tanks and hazardous waste. Approximately 110 such requests were fielded during 2005.

IV. 2005 SPCC Technical Assistance Site Visits

Summary Statistics for Technical Assistance Program, 2005:

Total number of technical assistance site visits conducted during 2005: 55

Retail Service Stations - 19

Bulk Plants - 28

Bulk Plant & Retail Service Station Combined - 2

Marinas - 4

Airports - 2

Total number of SPCC plans reviewed as part of the technical assistance site visits: 32

AST Facilities Inspected in 2005 - Size of Facility (total volume storage) by Facility Type:

Facility Type ► Total Volume Storage ▼	Retail Service Station	Bulk Plant	Bulk Plant & Retail Service Station Combined	Marina	Airport	All Facilities
1,320 gallons – 10,000 gallons	9	0	0	2	1	12
10,001 gallons – 50,000 gallons	10	8	0	2	1	21
50,001 – 100,000 gallons	0	13	2	0	0	15
> 100,000 gallons	0	7	0	0	0	7

Number of facilities having SPCC plans (percentage of all facilities visited in 2005):

- Number of facilities that have a certified SPCC plan: 31 (56%)
- Number of facilities that have a draft SPCC plan: 2 (4%)
- Number of facilities with no SPCC plan: 22 (40%)

Type of tank secondary containment used by facilities – number of facilities (percentage of all facilities visited in 2005):

- Dikes only: 43 (78%)
- Double-walled tanks only: 6 (11%)
- Combination of dikes and double-walled tanks: 6 (11%)
- No secondary containment for tanks: 0 (0%)

Most commonly seen problems - number of facilities visited in 2005:

- No or inadequate overfill protection: 25 (45% of all facilities visited)
- Inadequate secondary containment for tanks: 9 (16% of all facilities visited)
- Dike valve left open: 2 (4% of facilities with dikes)
- No containment for loading rack at bulk plants: 8 (27% of bulk plants visited)

AST Facilities with underground piping – number of facilities visited in 2005:

- Total number of facilities with underground piping: 25
- Facilities having underground unprotected steel piping: 6
- Facilities with noncorrosive piping systems but no continuous leak detection: 6
- Facilities with double-walled piping systems and continuous leak detection systems but the leak detection system was not functioning/not maintained/the alarm was ignored: 6
- Facilities with double-walled piping systems and continuous leak detection systems that appeared to be functioning and being maintained properly: 8
- No line leak detectors with a pressurized pumping system: 2 (Note: 7 AST facilities that were visited have pressurized pumping systems.)

Proximity to Sensitive Resources:

- Number of facilities located over a Significant Sand/Gravel Aquifer: 14 (25%)
- Number of facilities within 1000 feet of a public water supply: 5 (9%)
- Number of facilities within 300 feet of surface water: 16 (29%)
- Number of facilities within a Source Water Protection Area for a public drinking water supply: 3 (5%)

Remedial Actions at AST Facilities Visited in 2005

Sixteen of the facilities visited in 2005 were asked to take remedial action to bring the facility into compliance with applicable provisions of the DEP's statutes and rules regarding underground piping. These facilities were found to be in noncompliance for a variety of reasons: unprotected underground steel piping (usually very short sections); cathodically protected piping that had not been tested within the year as required; non-functioning alarm probes in leak detection systems; water or product in piping sumps; and partially buried unprotected piping where piping runs transitioned from aboveground to underground piping. To date, nine of those facilities have resolved their areas of noncompliance and one facility has proposed a time frame to bring the facility into compliance.

In addition to the facilities with underground piping issues, one facility was referred to the DEP's Division of Water Resource Regulation to modify their facility drainage to comply with the requirements for discharge of oil-contaminated stormwater from the facility's tank dike and loading rack.

IV. Communication & Coordination with the U.S. EPA

SPCC program staff contact staff at the U.S. EPA, New England Regional Office in Boston for guidance as needed on interpreting the requirements of the federal SPCC regulation. Contacts with the EPA staff were primarily by e-mail with some telephone calls. We corresponded with EPA staff via e-mail approximately 40 times during 2005. Some of the topics discussed included tank inspection standards, secondary containment requirements, overfill protection requirements,

federal spill reporting requirements, and status of proposed federal rule changes and other federal documents.

Occasionally, EPA staff contact us for information on AST facilities in Maine, and to provide us with information regarding AST facilities they have inspected in Maine. SPCC program staff accompanied EPA staff at their request on one of their 2005 SPCC inspections at a bulk plant in Maine.

V. AST Facilities not in Compliance with 38 M.R.S.A. § 570-K(5)

As discussed under Section I above, the Legislature directed the DEP to evaluate, and make recommendations concerning possible financial repercussions for a facility under the jurisdiction of the DEP's SPCC program that does not have an SPCC plan that meets federal and state requirements. At the state level, the primary financial repercussion occurs if a regulated facility has a spill extensive enough to incur significant clean-up costs.

If, at the time of the spill, the facility is in compliance with SPCC and other applicable requirements, most of the cleanup costs are covered by the state-administered Ground Water Oil Clean-up Fund under 38 MRSA §§568-A and 569-A. To receive this coverage, the facility owner need only file an application for coverage with the DEP and pay the "standard deductible" as established under 38 MRSA § 568-A(2)(A). For AST facilities, the standard deductible is based upon the storage capacity of the facility. Standard deductibles for AST facilities storing up to 50,000 gallons are \$2,500 and for AST facilities storing between 50,000 and 250,000 gallons are \$5,000.

If a regulated facility does not have a conforming SPCC plan, the facility owner must pay a "conditional deductible" in addition to the standard deductible. Conditional deductibles are assessed for failure to meet certain specified regulatory requirements. The conditional deductibles for AST facilities are specified under 38 MRSA § 568-A(2)(C). A copy of this statute is attached as Appendix B. The deductible for failure to implement an SPCC plan is \$5000. Whenever we encounter AST facilities that lack the required SPCC plan, we advise them of this potential for increased liability in the event of a spill. We believe that the effectiveness of this message will be enhanced if the deductible amount is increased, and therefore recommend doubling the deductible for failure to have a conforming SPCC plan to \$10,000, the same as the current deductible for failure to report leaks at an AST facility.

The DEP has the authority under 38 M.R.S.A. § 349 to fine AST facilities that violate section 570-K(5) by failing to have an SPCC plan. To date the SPCC program staff have not assessed any such fines, focusing instead on education and outreach. However, we know of at least one Maine AST facility that was fined in 2005 by the U.S. EPA, acting under its separate authority to enforce the federal SPCC requirements.

Appendix A

Proposed Legislation regarding Underground Piping at AST Facilities

(LD 1768)

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

Sec. 1. 38 MRSA §563, as amended by PL 2001, c. 231, §17 and c. 626, §§12 and 13, is further amended to read:

§563. Registration and inspection of underground oil storage tanks and piping

1. **Prohibition on unregistered tanks.** The following prohibition on unregistered tanks applies.

A. A person may not install, or cause to be installed, a new or replacement underground oil storage facility without first having registered the facility with the commissioner in accordance with the requirements of subsection 2, and having paid the registration fee in accordance with the requirements of subsection 4, at least 10 business days prior to installation. If compliance with this time requirement is impossible due to an emergency situation, the owner or operator of the facility at which the new or replacement facility is to be installed shall inform the commissioner as soon as the emergency becomes known.

The owner or operator shall make available a copy of the facility's registration at that facility for inspection by the commissioner and authorized municipal officials.

B. No person may operate, maintain or store oil in an underground oil storage facility after May 1, 1986, unless each underground oil storage tank at that facility is registered with the commissioner.

2. **Information required for registration.** The owner or operator of an underground oil storage facility shall provide the commissioner with the following information on a form in triplicate to be developed and provided by the commissioner; one copy to be submitted to the commissioner, one copy to be promptly submitted upon completion to the municipality and one copy to be retained by the owner or operator:

A. The name, address and telephone number of the owner of the underground oil storage tank to be registered;

B. The name, address and telephone number of the person having responsibility for the operation of the tank to be registered;

C. ~~The location of the facility as necessary to determine if the facility meets the siting restrictions under section 563-C;~~

E. The size of the tank to be registered;

F. The type of tank or tanks and piping at the facility and the type of product stored or contained in the tank or tanks and piping;

G. For new, replacement or retrofitted facilities, the name of the installer, the expected date of installation or retrofit, the nature of any emergency pursuant to subsection 1, paragraph A, if applicable, and a description or plan showing the layout of the facility or tank, including the form of secondary containment, other forms of leak detection or equipment to be installed pursuant to section 564, subsection 1, paragraph A and, when applicable, the method of retrofitting leak detection pursuant to section 564, subsection 1 or 1-A;

H. For existing facilities and tanks, the best estimate of the age and type of tank or tanks and underground piping at the facility; and

I. Expiration For underground oil storage tanks, the expiration date of tank manufacturer's warranty.

3. Amended registration required. The owner or operator of an underground oil storage facility shall file an amended registration form with the commissioner immediately upon any change in the information required pursuant to subsection 2, including any modifications to the facility or a change of ownership. The board may establish, by rule, a late registration period not to exceed 10 business days in duration. A fee may not be charged for filing an amended registration.

4. Registration fees. The owner or operator of an underground oil storage facility shall pay an annual fee to the department of \$35 for each tank located at the facility, except that single family homeowners are not required to pay a fee for a tank at their personal residence. Annual payments must be paid on or before January 1st of each calendar year.

5. Penalty for failure to submit amended registration. Any person who has not submitted an amended registration form in accordance with subsection 3 shall pay a late fee of \$100. This does not preclude the commissioner from seeking civil penalties from any person who fails to register a facility or tank.

6. Providing notice. Prior to the sale or transfer of any real estate where an underground oil storage facility is located, the owner of the real estate shall file a written notice with the

purchaser or transferee. The notice shall must disclose the existence of the underground oil storage facility, its registration number or numbers, the real estate where the facility is located, whether or not the facility has been abandoned in place pursuant to section 566-A and that the facility is subject to regulation, including registration requirements, by the department under this subchapter.

7. Supplier notification requirement. Any person who sells a tank intended to be used as an underground oil storage tank shall notify the purchaser in writing of the purchaser's obligations under this section.

8. Certification of proper installation. Owners of new and replacement facilities shall ensure that the installer provides certification to the commissioner, within 30 days of completion of installation, that the materials and methods used comply with the applicable installation standards of this subchapter.

9. Annual compliance inspection. The owner of an underground oil storage facility is responsible for ensuring that each underground oil storage tank and associated piping at the facility are inspected annually for compliance with the requirements of this subchapter and any rules adopted under this subchapter and the requirements for gasoline vapor control in rules adopted under section 585-A. The owner shall correct or arrange for correction of any deficiencies detected during the inspection as necessary to bring the facility into compliance with these requirements.

A. The owner of an underground oil storage facility shall submit annual inspection results to the department on or before July 1, 2003 and on or before July 1st annually thereafter. The results must be recorded on a form provided by the department and must include a certification statement, signed by an underground oil storage tank inspector or underground oil storage tank installer certified by the Board of Underground Oil Tank Installers under Title 32, chapter 104-A that each tank and associated piping have been inspected and any deficiencies discovered during the inspection have been corrected.

B. In addition to other enforcement actions allowed under state law, the commissioner may issue an administrative order after providing a notice of violation for failure to comply with the requirement of this subsection and after providing a reasonable opportunity to correct the violation. The administrative order may include, but is not limited to, a requirement that the owner or operator of an underground oil storage facility cease deliveries of oil to,

and operation of, the underground oil storage tank and associated piping that are the subject of the violation until the violation has been corrected.

C. Service of the commissioner's administrative order under paragraph B must be made by hand delivery by an authorized representative of the department or by certified mailing, return receipt requested.

D. The person to whom the administrative order under paragraph B is directed shall comply immediately or within the time period specified in the order. That person may appeal the order to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII 7.

10. Aboveground oil storage tanks with underground piping. An owner of an aboveground oil storage tank with underground piping is subject to the requirements of this subsection.

A. Effective January 1, 2007, a person may not store motor fuel in an aboveground oil storage facility that has underground piping without first having registered the facility with the commissioner in the same manner as is required of underground oil storage facilities under subsections 2 to 5.

B. Prior to the sale or transfer of an aboveground oil storage tank that has underground piping, the owner shall notify the purchaser or transferee in writing of the existence of the underground piping and the requirement that the tank be registered with the commissioner if the tank will be used to store motor fuel.

C. The owner of an aboveground oil storage tank used to store motor fuel shall ensure that, within 30 days after completion of installation of underground piping associated with the tank, the installer certifies in writing to the commissioner that the materials and methods used comply with the applicable installation standards of this subchapter.

D. The owner of an aboveground oil storage tank used to store motor fuel shall ensure that underground piping associated with the tank is inspected annually for

compliance with the requirements of this subchapter and the requirements for gasoline vapor control in rules adopted under section 585-A. The owner shall submit annual inspection results to the department on or before July 1, 2007 and on or before July 1st annually thereafter. The results must be recorded on a form provided by the department and must include a certification statement, signed by an underground storage tank inspector or an underground oil storage tank installer certified by the Board of Underground Oil Tank Installers under Title 32, chapter 104-A that the piping has been inspected and any deficiencies discovered during the inspection have been corrected. The requirements of this paragraph may be enforced in the same manner as is provided for underground oil storage facilities under subsection 9.

This subsection does not apply to tanks or piping at an oil terminal facility as defined in section 542, subsection 7.

Sec. 2. 38 MRSA §570-K, sub-§3, as amended by PL 1999, c. 334, §8, is further amended to read:

3. Underground piping installation. All new and replacement underground piping, ~~whether replacement or new,~~ installed on or after June 24, 1991 associated with an aboveground oil storage facility must be installed, operated, maintained and removed in accordance with sections 564, 565 and 566-A and all rules adopted by the board pursuant to sections 564, 565 and 566-A. Effective January 1, 2011, this subsection applies to underground piping installed before June 24, 1991 if the piping is associated with an aboveground tank used to store motor fuel.

SUMMARY

The bill requires aboveground motor fuel storage tanks that have underground piping to be registered with the Department of Environmental Protection, assessed an annual \$35 registration fee and inspected annually in the same manner as is currently required for underground oil storage tanks. The bill also requires that, beginning January 1, 2011, underground piping installed at an aboveground motor fuel storage facility before June 24, 1991 meet the same leak detection requirements that apply to piping installed after that date.

Appendix B

Conditional Deductibles for Aboveground Oil Storage Facilities

38 M.R.S.A. § 568-A(2)(C)

C. Conditional deductibles for aboveground facilities and tanks are as follows.

- (1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal pursuant to 16-219 CMR, chapter 34, the deductibles are:
 - (a) Five thousand dollars for failure to obtain a construction permit from the Office of the State Fire Marshal, when required under Title 25, section 2441, and 16-219 CMR, chapter 34;
 - (b) Five thousand dollars for failure to design and install piping in accordance with section 570-K and rules adopted by the department;
 - (c) Five thousand dollars for failure to comply with an existing consent decree, court order or outstanding deficiency statement regarding violations at the aboveground facility;
 - (d) Five thousand dollars for failure to implement a certified spill prevention control and countermeasure plan, if required;
 - (e) Five thousand dollars for failure to install any required spill control measures, such as dikes;
 - (f) Five thousand dollars for failure to install any required overfill equipment;
 - (g) Five thousand dollars if the tank is not approved for aboveground use; and
 - (h) Ten thousand dollars for failure to report any leaks at the facility.
- (2) For aboveground tanks subject to the jurisdiction of the Oil and Solid Fuel Board, the deductibles are:
 - (a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Oil and Solid Fuel Board and in effect at the time of installation;
 - (b) Two hundred and fifty dollars for failure to conform an upgraded facility to the requirements provided in rules of the Oil and Solid Fuel Board;
 - (c) Two hundred and fifty dollars for failure to make a good faith effort to properly maintain the facility; and
 - (d) Five hundred dollars for failure to notify the department of a spill.

The commissioner shall make written findings of fact when making a determination of deductible amounts under this subsection. The commissioner's findings may be appealed to the Fund Insurance Review Board, as provided in subsection 3-A. On appeal, the burden of proof is on the commissioner as to which deductibles apply.

After determining the deductible amount to be paid by the applicant, the commissioner shall pay from the fund any additional eligible clean-up costs and 3rd-party damage claims up to \$1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek reimbursement from the fund. The commissioner may pay from the fund any eligible costs above \$1,000,000, but the commissioner shall recover these expenditures from the responsible party pursuant to section 569-A.

An applicant found ineligible for fund coverage for failure to achieve substantial compliance under former subsection 1, paragraph B, or failure to apply within 180 days of reporting the discharge may, on or before July 1, 1996, make a new application for fund coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all applicable deductible amounts in this subsection and the commissioner waives the 180-day filing requirement pursuant to subsection 1.