

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

December 13, 2007

Senator John Martin, Chair
Representative Theodore Koffman, Chair
Joint Standing Committee on Natural Resources
123rd Maine Legislature
Room 214 Cross Office Building
Augusta, Me. 04330

Dear Senator Martin, Representative Koffman and Members of the Committee,

Attached is a copy of a guidance document established by the Maine Department of Environmental Protection as required by Resolves 2007, Chapter 99.

The guidance describes the use of memoranda of agreement between aboveground oil storage and handling facilities and the Department of Environmental Protection relating to the reporting of oil spills and discharges. The guidance describes the standard terms of the agreement, eligibility criteria and the approval process used by the department. The process described in the guidance has been followed to enter into 13 existing agreements.

Please contact me with any questions or comments you may have concerning the guidance. I can be reached at 287-7674 or by electronic mail at scott.whittier@maine.gov

Sincerely,

A handwritten signature in cursive script that reads 'Scott D. Whittier'.

Scott D. Whittier, Director
Oil & Hazardous Waste Facilities Regulation Division

cc: Mark Hyland, Director, BRWM
Scott Cowger, Office of the Commissioner

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

GUIDANCE DOCUMENT

DAVID P. LITTELL
COMMISSIONER

FOR

MEMORANDUM OF AGREEMENTS FOR DISCHARGES OF OIL LESS THAN TEN GALLONS

BACKGROUND

The Department of Environmental Protection (the Department) enters into a Memorandum of Agreement (MOA) with certain facilities that have trained oil spill response personnel and sufficient equipment and appropriate containment to contain and clean up spills or discharges of oil in quantities of ten (10) gallons or less. The MOA creates a reporting alternative for facilities that may have minor spills under every day operations and maintenance. The MOA provides this alternate method of oil spill reporting for petroleum spills of ten (10) gallons or less that do not reach the soils, surface waters or groundwater prior to discovery and clean up.

The facility maintains a written log at the facility to record spill event information. This log must be available on site for review by Department Staff and must be sent to the appropriate regional response office annually by a date specified in the MOA. The alternate reporting requirement is an efficient approach to tracking small spills and is an acceptable method for reporting petroleum spills.

Maine law provides that any person who causes or is responsible for a discharge is not subject to any fines or civil penalties if that person:

1. Reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or Commissioner; and
2. Reimburses the department for any disbursement made from the fund in connection with the discharge...within 30 days of demand.

HOW TO OBTAIN AN MOA

- Prior to requesting an MOA from the Department the facility operator should first conduct an in house review of their facility operations and determine if they meet the criteria required by the Department for this agreement.
- A facility owner or operator interested in obtaining an MOA should contact Richard Kaselis richard.m.kaselis@maine.gov or John Dunlap john.m.dunlap@maine.gov at 207-287-6113 or at:

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Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
Division of Oil and Hazardous Waste Facilities Regulation
State House Station # 17
Augusta, Maine 04333-0017

- Upon receipt of a request, Department staff will supply the facility owner or operator with a draft MOA and public notice document. The public notice document must be published by the facility in a local newspaper in accordance with 06-096 CMR 2, Section 14 A of the Department's Administrative Rules. A copy of the completed draft MOA and the public notice must also be sent to the local municipal office for the municipality where the facility is located.
- Staff from the Division of Response Services in the facility's regional office will contact you to arrange for an on site inspection to verify that the facility meets the required eligibility standards listed below. If the facility is determined to have the capability to contain and clean up petroleum spills of 10 gallons or less, Department staff request the facility to publish a public notice.
- The public notice must be published prior to entering into the MOA. The notice is a means of notifying the surrounding community of the intent to enter an agreement concerning oil spill reporting and allows the public a thirty (30) day comment period to voice any concerns.

ELIGIBILITY CRITERIA

1. Maintain trained response personnel and equipment to control and remove petroleum spills in quantities of ten (10) gallons or less.
2. Maintain the integrity of floors, curbing and walls designed to control and contain spills. The containment areas must be free of drains, valves, holes, cracks and sumps that could cause spills to migrate outside of the proposed containment areas. If drains are required in containment areas they must remain closed and opened only under direct supervision.
3. Contain and properly clean up oil spills within 24 hours of discovery of the spill.

4. Maintain a log (paper or electronic) and record the following information for each spill:
 - i. The Date and time of the spill,
 - ii. The location of the spill,
 - iii. A brief description of the spill clean up measures taken,
 - iv. The likely cause of the spill,
 - v. The method of re-use or disposal of the recovered material,
 - vi. The name of the person recording the spill event;
5. Make the log available for inspection by Department staff upon request and submit a copy periodically (not less than annually) to the Department.
6. Report oil spills within two (2) hours of discovery of any spill that reaches soils, surface waters or groundwater as well as any oil spills in excess of ten (10) gallons.

APPLICABLE STATUTES

Title 38 M.R.S.A., Section 543 prohibits the discharge of oil into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State or into or upon any lake, pond, river, stream, sewer, surface water drainage, groundwater or other waters of the State or any public or private water supply or onto lands adjacent to, on, or over such waters of the State, unless licensed by the Department.

Title 38 M.R.S.A. Section 548 requires in part that any person discharging or suffering the discharge of oil in the manner prohibited by Section 543 shall immediately undertake to remove that discharge to the Commissioner's satisfaction.

Title 38 M.R.S.A. Section 550 provides that any person who causes or is responsible for a discharge in violation of Section 543 is not subject to any fines or civil penalties if that person:

1. Report and remove. Reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or commissioner; and
2. Reimburse. Reimburses the Department for any disbursement made from the fund in connection with the discharge pursuant to Section 551, subsection 5, paragraph B within thirty (30) days of demand.

Title 38 M.R.S.A. Section 564, subsection 2A, paragraph H, required the Board of Environmental Protection to adopt rules requiring owners of underground oil storage tanks to report leaks or evidence of leaks. The rule may not require reporting of discharges of oil above ground of 10 gallons or less, when these leaks or discharges occur on the premises and do not reach groundwater or surface waters of the State and are cleaned up within 24 hours of discovery, and a written log is maintained at the facility or owner's place of business in the State of Maine. For each discharge the log must record the date of discovery, its source, and the general location of the discharge at the facility, the date and method of cleanup and the signature of the facility owner or operator certifying the accuracy of the log.

While section 564 has limited applicability to facilities used to store motor fuels or used in the marketing and distribution of oil, it does provide a method of reporting oil spills similar to the terms of this agreement. The required Rule, 06-096 Chapter 691, was adopted in 1991.

2guidancedocumentmemorandumofagreement