Report to the Legislature

January 15, 2005

I. Introduction

In March 2002, the Maine Legislature passed a bill authorizing the Department of Environmental Protection (DEP) to require compliance with existing federal spill prevention, control and countermeasures (SPCC) regulations for certain aboveground oil storage (AST) facilities in Maine. Governor Baldacci signed the legislation into law in April and it became effective on July 25, 2002.[1]

A copy of the bill as enacted is appended to this report. The key provision is section 3, enacting 38 MRSA §570-K(5)[2] to read:

> An aboveground storage facility used in the marketing and distribution of oil to others must be operated in compliance with the federal requirements for the preparation and implementation of spill prevention control and countermeasure plans under 40 Code of Federal Regulations, 112 in effect on April 17, 2003. Failure to comply with those federal requirements in accordance with the deadlines set by the United States Environmental Protection Agency constitutes a violation of this Title. If the department believes that a facility's plan does not satisfy those federal requirements, the department shall request an opinion from the United States Environmental Protection Agency as to the legal adequacy of the plan and any amendment necessary to bring the facility into compliance with those federal requirements. The department shall prepare educational and technical materials for use by facilities affected by this subsection. This subsection is repealed October 1, 2005.

The law does not apply to home heating oil tanks or other tanks used to store oil for consumption on the premises. It applies only to AST facilities used "in the marketing and distribution of oil to others." The failure of any such facility to comply with federal SPCC requirements now is a violation of Maine law enforceable by the DEP.

The law does not impose any additional requirements on the regulated community. If the DEP believes that a facility's SPCC plan does not satisfy the existing federal regulations, the DEP must request an opinion from the U.S. Environmental Protection Agency (EPA) as to the legal adequacy of the plan and any amendment necessary to bring the facility into compliance with the federal requirements. The DEP also must provide educational materials and technical assistance to the regulated community.

Section 570-K(5) is repealed by its terms on October 1, 2005 unless the Legislature acts to remove this sunset date from the law. The purpose of this report is to provide legislators with an

[1] See *An Act to Facilitate Compliance with Spill Prevention Requirements and Authorize Reimbursement for Certain Oil Spill Remediation Expenses*, PL 2001, c. 605, §3.

[2] Title 38, Maine Revised Statutes Annotated, section 570-K, subsection 5. This statute was amended by PL 2003, c. 245, §19 (eff. September 13, 2003) to incorporate changes in the federal SPCC regulations through April 17, 2003.

informed basis for deciding whether to extend the law. Specifically, the Legislature directed the DEP to report by January 15, 2005 on all activities undertaken under the provisions of section 570-K(5). The report must include: the number of facilities inspected; the number of SPCC plans reviewed; the number and nature of any written communications submitted to EPA; the number and result of all enforcement actions taken for violations of the statute; and an overview of the educational and technical assistance efforts undertaken by the DEP. The report must also include a qualitative assessment of the DEP's performance by the regulated community.

II. A Brief History of the Federal and State SPCC Programs

Existing 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. The federal rules were most recently revised in August of 2002. The federal rules apply to those facilities that "can be reasonably expected to spill into navigable waters." The EPA interprets this applicability standard quite broadly, and has indicated that virtually all Maine facilities exceeding 1,320 gallons of aboveground oil storage capacity fall within the scope of federal SPCC regulations. The primary focus of the federal regulations is the protection of surface waters rather than groundwater.

In 2000, a Task Force was convened at the direction of the Legislature[3] to review existing regulations regarding aboveground oil storage facilities in Maine. The Task Force also reviewed historical spill data for AST facilities in the state. The Task Force concluded that existing federal regulations could provide adequate protection from oil spills from aboveground facilities, but that federal enforcement of these regulations was not adequate.

The Maine legislature enacted 38 M.R.S.A. § 570-K(5) to address this issue by giving the DEP authority to enforce the federal SPCC requirements. The SPCC Program is administered under the DEP's Bureau of Remediation and Waste Management (BRWM), Division of Technical Services. One position was established to carry out compliance assistance and enforcement activities related to this new state authority.

III. The Problem: Historical Spill Data and Cleanup Costs Associated with ASTs

Most of the costs of cleaning up the spills at AST facilities are paid from the Ground Water Oil Clean-Up Fund established under 38 M.R.S.A. § 569-A. Revenues for this fund come from fees assessed on petroleum products brought into Maine and from registration fees paid by underground oil storage (UST) facilities. Over the nine-year period from 1995 through 2003, 1563 spills occurred at non-residential, non-marine oil AST facilities in Maine. As of October, 2004 the Maine DEP had spent about $5.7 million dollars[4] to clean up these spills. Of the 1563 spills that occurred, 415 spills occurred at service stations or bulk plants,[5] accounting for $3.4

[3] See *An Act Regarding Oil Storage Facilities and Groundwater Protection*, PL 1999, c. 714.

[4] This figure excludes money spent at a single, extremely contaminated junkyard site where clean-up costs totaled $5.8 million as of October 2004.

[5] Bulk plants are facilities that are used for temporary bulk storage of petroleum products prior to distribution to retail outlets, or commercial or residential consumers.

million of the total clean-up costs as of October, 2004. Thus, spills at service stations and bulk plants accounted for only about a quarter (27%) of the number of spills, but over a half (60%) of the total clean-up costs. The number of spills recorded at bulk plants and service stations actually increased in the early 2000's compared to the late 1990's: 197 spills in the *five*-year period from 1995 through 1999, and 218 spills in the *four*-year period from 2000 through 2003.

For both time periods about three times more spills occurred at bulk plants than at service stations, but service station cleanup costs ran about five times higher than the cleanup costs associated with bulk plants. This likely is due to the fact that bulk plants handle and transfer relatively large volumes of product compared to retail service stations, but retail service stations are more likely to be sited close to drinking water supplies. Furthermore, retail service stations handle large volumes of gasoline which contain many toxic constituents, such as benzene and methyl tertiary butyl ether (MTBE), that typically travel faster and farther in groundwater if spilled than do heating oil products.

In summary, spills at bulk plants and retail service stations account for a relatively small proportion of the number of spills at AST facilities in Maine, but represent a disproportionately high percentage of total clean-up costs. There is generally more potential for a spill to occur at a bulk plant compared to a retail service station, but generally more potential for drinking water contamination at a service station when a spill does occur.

IV. Program Goals & Tasks

A. Goals: The goals of the SPCC Program are to:

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

B. Tasks to Accomplish Program Goals:

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

One of the first tasks was to determine the location of facilities subject to the SPCC requirements. While several state agencies regulate various aspects of AST facilities, no one state agency has a comprehensive list of all AST facilities in the state. One of the recommendations of the legislative AST task force was to create a universal interagency tanks database from the existing state databases. During the summer of 2003, DEP staff focused on compiling AST databases from four state agencies,[6] sorting through the

[6] The four agencies are: the Maine Department of Agriculture (certifies the accuracy of the meters at the fuel dispensers); the Maine State Fire Marshal's Office (administers fire codes and issues permits for AST facilities); the

compiled list to eliminate duplicates, and calling facility owners to confirm whether a facility has sufficient volume of storage in ASTs to trigger the SPCC requirements. The list currently contains about 390 facilities that appear likely to be subject to the state SPCC program. The list will require further refinement as more information becomes available. The DEP anticipates incorporating this AST list into a joint DEP/State Fire Marshal Office (SFMO) list of all ASTs and underground oil storage tanks (USTs) in the state, pending resolution of technical issues with the DEP's existing UST database.

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

Jacques-Whitford, a consulting firm, was retained in the fall of 2002 to develop educational materials to assist AST facility owners/operators in complying with regulatory requirements, including the SPCC regulations. A guidance document and model SPCC plans were developed by early 2003. 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 site currently contains electronic versions of the above referenced materials and also has links to EPA SPCC web sites. These educational materials have also been provided in hard copy directly to facility owners and operators during training sessions and technical assistance site visits.

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/operators, consultants and government staff. The Portland seminar was a full-day session while the other three seminars were three-hour evening sessions. 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. The Portland session included a presentation by Don Grant, SPCC Program Coordinator with the New England Regional Office of the EPA.

At the request of the Maine Maritime Trade Association, program staff also held SPCC training sessions at two of the Association's meetings in 2003. The content of these training sessions was similar to that of the state-wide seminars, but focused on marina issues.

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. Fifty-two site visits have been conducted as of October 1, 2004. See Section V below for more detail on the site visit program.

Maine DEP (requires registration of underground oil storage facilities); and the Maine Emergency Management Agency (requires submittal of inventory reports of hazardous materials).

5. *Develop Guidelines & Best Management Practices for Managing Dike Water at AST facilities.*

The discharge of oil to surface or ground water is prohibited under 38 M.R.S.A. § 413 and § 543, unless licensed by the DEP. Dikes are often used to provide secondary containment for ASTs, and the diked areas can accumulate stormwater. If the water in the diked area becomes contaminated by petroleum products the discharge of that water from the diked area becomes subject to the discharge prohibition of sections 413 and 543. Staff in the DEP Bureau of Remediation and Waste Management (BRWM) are working with staff in the DEP Division of Water Resource Regulation (DWRR) to develop guidelines and best management practices (BMPs) for use by AST facilities that discharge dike water.

The DWRR regulates the discharge of waste water to surface waters under section 413, including dike water from AST facilities. The DWRR already has developed written Waste Discharge Guidance, last revised August 31, 2004. This document applies to all AST facilities that have containment dikes and that are located within 300 feet of a surface water or that discharge directly to a surface water, except marine oil terminals and home heating oil tanks. Under the Guidance, AST facilities with containment dikes may be exempt from waste discharge licensing requirements provided the dike water is treated through an oil/water separator to 15 parts per million (ppm) or less of petroleum contamination and is discharged to surface water. Fifteen ppm is approximately the level of contamination at which a sheen would become visible on the dike water.

The 15 ppm standard, however, does not meet the BRWM standards for remediation of oil contaminated soil and water. The BRWM standards— 50 parts per *billion* (ppb) for gasoline and fuel oil, and 35 ppb for the gasoline additive MTBE— are based upon the Maximum Exposure Guidelines (MEGs) established by the Department of Human Services for drinking water. Therefore, the BRWM is developing guidelines and best management practices specifically for the protection of drinking water resources as guidance to AST facilities in meeting the requirements of both section 413 and section 543. The draft guidelines and BMPs will be shared with the Maine Oil Dealers Association (MODA), EPA, SPCC engineering consultants and other interested parties for review and comment prior to final release.

6. *Track ongoing changes to federal SPCC regulations, and other pertinent state laws and rules affecting AST facilities.*

DEP staff monitor changes in federal regulations and state laws, rules and policies that may affect AST owners/operators in Maine. In 2003 and 2004, these changes included:

- Deadline extensions for updating SPCC plans to comply with the August, 2002 changes to the federal regulations;
- New guidance regarding integrity testing for certain shop fabricated ASTs, security requirements, and the definition of "loading rack"; and

- Revisions to the rules administered by the State Fire Marshal. The State Fire Marshal's Office revised its rules in August 2004 to update references to two National Fire Protection Association (NFPA) codes: NFPA 30, Flammable and Combustible Liquids Code, and NFPA 30-A, Code for Motor Fuel Dispensing Facilities and Repair Garages. The Fire Marshal's revised rules also include an explicit requirement to report all oil spills at AST facilities to the DEP within two hours of discovery. This reporting requirement was added at DEP request because, although AST facility owners can be fined for the illegal discharge of oil if they fail to report a spill with two hours,[7] there is no explicit reporting requirement in the DEP statutes.

V. SPCC Technical Assistance Site Visits

***Procedures for Site Visits*:** DEP staff generally call ahead to schedule a time for each site visit. Most site visits take about one to one and a half hours to complete. Depending upon the travel time, staff can usually accomplish 3 to 4 site visits in a day. During the site visit DEP staff will inspect the ASTs, any piping (aboveground and underground), loading racks[8] and dispensers (if applicable). DEP staff will also review the facility's SPCC plan if there is one. Facility owners/managers are encouraged to participate in the inspection, and most do. DEP staff will discuss any deficiencies or recommendations for improving spill prevention and control at the facility. Photographs and Global Positioning System (GPS) readings are taken to accurately locate the facility if permission is granted by the owner/manager. Photographs assist the DEP staff in writing follow-up letters and the GPS points are used to track facility locations in relation to other resources such as surface waters, significant aquifers, and public drinking water supplies. DEP staff send a follow-up letter to the facility owner/manager within 2 to 3 weeks, summarizing the recommendations and issues discussed on site. A sample follow-up letter is appended to this report.

Summary Statistics for Technical Assistance Program:

Total number of technical assistance site visits conducted as of October 1, 2004: 52

Retail Service Stations - 30
Bulk Plants - 13
Bulk Plant & Retail Service Station Combined - 2
Marinas - 5
Airports – 2

Total number of SPCC plans reviewed as part of the technical assistance site visits: 21

[7] See 38 MRSA §550.
[8] A loading rack is a structure at a bulk plant used to load fuel trucks. The structure typically consists of a platform to allow access to load trucks, and is equipped with transfer pumps, piping and controls used to load petroleum products into trucks.

AST Facilities Inspected - 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	12	0	0	4	0	16
10,001 gallons – 50,000 gallons	18	5	0	1	2	26
50,001 – 100,000 gallons	0	7	2	0	0	9
> 100,000 gallons	0	1	0	0	0	1

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

- Number of facilities that have a current certified SPCC plan: 18 (34%)
- Number of facilities that have a draft SPCC plan: 3 (6%)
- Number of facilities with an SPCC plan of uncertain certification status: 1 (2%)
- Number of facilities with no SPCC plans: 30 (58%)

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

- Dikes only: 38 (73%)
- Double-walled tanks only: 8 (15%)
- Combination of dikes and double-walled tanks: 5 (10%)
- No secondary containment: 1 (2%)

Most commonly seen problems - number of facilities:

- No or inadequate overfill protection: 20 (38% of all facilities visited)
- No or inadequate emergency venting: 18 (35% of all facilities visited)
- No or inadequate secondary containment for tanks: 12 (24% of all facilities visited)
- Dike valve left normally open: 6 (14% of facilities with dikes)

- No containment for loading rack at bulk plants: 7 (47% of bulk plants visited)

AST Facilities with underground piping :

- Total number of facilities with underground piping: 28
- Facilities not meeting all of the requirements of Chapter 691: 16 (*57%)
- Single-walled bare steel piping: 3 (*11%)
- Single-walled fiberglass or cathodically protected steel piping: 3 (*11%)
- No continuous leak detection system: 10 (*38%)
- No line leak detectors with a pressurized pumping system: 1 (Note: 12 AST facilities that were visited have pressurized pumping systems.)

* Percentage of the total number of facilities with underground piping. See the summary analysis section below for more detail on the requirements for underground piping under Chapter 691 and how they pertain to AST facilities.

Proximity to Sensitive Resources:

- Number of facilities located over a Significant Sand/Gravel Aquifer: 16 (*50%)
- Number of facilities within 1000 feet of a public water supply: 1 (*3%)
- Number of facilities within 300 feet of surface water: 5 (*16%)

- Number of facilities within a Source Water Protection Area for a public drinking water supply: 2 (6%)

* Percentage of the total number of facilities where GPS readings were taken. GPS readings were taken at 32 of the sites visited. GPS readings were not taken at the other 20 sites visited due to the GPS unit being unavailable or malfunctioning, or permission not being granted by the facility owner.

Summary analysis of findings during site visits:

Over half of the facility owners contacted were not aware of the federal SPCC rules and did not have an SPCC plan in place for their facility. Furthermore, some facility owners/operators were only minimally familiar with the oil storage, piping and dispensing systems at their facility. In many cases the current facility owner did not own the facility at the time that the storage tanks and piping were installed, and records of the installation were not passed from the original owner to the current owner.

Inadequate overfill protection was the most commonly seen problem at the facilities visited. For the purposes of this report, "inadequate overfill protection" is defined as not meeting the federal SPCC requirements. For tanks within dikes, overfill protection can be met with as minimal a measure as tank level gauges. Double-walled tanks require redundant overfill protection – a combination of an audible or visual alarm and an automatic shutoff device. In most cases where overfill protection was insufficient for a tank within a dike, it was a matter of the level gauge not being readily visible to the delivery person. For these facilities the remedy would be relatively simple, i.e. reorient or replace the tank gauge so that it is visible to the delivery person. Only

two facilities had no tank gauge or overfill alarm at all, and relied solely on manually inserting a measuring stick into the tank to determine ullage[9] and prevent overfills. Insufficient overfill protection for double-walled tanks was usually due to the tank having only one form of overfill protection. Given the preponderance of AST spills caused by overfills and the relative ease of improving overfill protection, this issue should be a priority for the DEP's SPCC program.

The second most commonly seen problem was a lack of emergency venting for ASTs. Emergency vents are tank vents separate from the so-called "normal" vents that allow routine filling and emptying of ASTs. The emergency vent is designed to prevent catastrophic failure of a tank due to overpressurization in the event of a fire at the tank. Emergency venting is a requirement of the NFPA codes administered by the State Fire Marshal's Office, but emergency venting can also be important for environmental reasons as well. One acceptable form of emergency venting is a "loose bolt manway." This method utilizes a manway on top of a tank with the bolts attaching the cover of the manway left loose. This allows the cover to lift up and release excess pressure in the event of a fire at the tank. Many tanks had manways that could serve as emergency vents, but the bolts were tightened down so that the manway cover could not lift up. Again, this is a relatively easy fix for most facility owners if the tank has a manway.

Another common problem seen at AST facilities was underground piping that does not meet the requirements of Chapter 691 of the DEP "Rules for Underground Oil Storage Facilities." These rules establish standards for the installation, maintenance and removal of underground oil storage tanks and piping, and also apply to underground piping at AST facilities. Chapter 691 requires, among other things, that underground piping be constructed of noncorrosive material and be double-walled with continuous leak detection. Underground piping in a pressurized pumping system is also required to be equipped with line leak detectors.

Three facilities visited by SPCC program staff failed to meet Chapter 691 requirements because they had underground bare steel piping, which is corrosive and has been illegal to use since July 1, 1995.[10] Two of these sites were situations where a short section of aboveground piping had inadvertently been covered with fill, and the third site involved a section of underground piping at a road crossing in an aboveground piping system. At some other facilities, the piping was constructed of fiberglass or cathodically protected steel but was only single-walled. Still other facilities had the requisite double-walled piping, but only a manual monitoring system for leaks or no leak detection system at all.

With the exception of the underground bare steel piping, most cases of nonconforming underground piping appeared to be legal under current law. This is because the best available information indicated that the piping was installed prior to June, 24, 1991 when AST facilities were first required to meet the underground piping requirements of Chapter 691. AST facilities with underground piping installed before June 24, 1991 are not required to retrofit their underground piping systems to comply with the leak detection requirements of Chapter 691. We believe this regulatory loophole should be closed as recommended in section XIV, paragraph A, below.

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[9] The amount of capacity in the tank that does not contain liquid.
[10] See 38 MRSA §570-K(2).

VI. Enforcement Actions

Although a significant number of the facilities visited did not have an SPCC plan in place, no formal actions to enforce 38 MRSA §570-K(5) have been taken by SPCC program staff. DEP staff decided to focus the first two years of the state SPCC program on education and outreach, except in egregious cases posing an immediate environmental or health threat, since the state SPCC program is relatively new and so many AST facility owners are unaware of the federal SPCC regulations. The DEP does plan to shift the focus of the program to enforcement and compliance by January 1, 2006, as more fully described under Section XIII.B below.

While the DEP has not yet take enforcement action for violations of section 570-K(5), six facilities have been required to make modifications to their piping systems to comply with Chapter 691, and one facility was required to modify their facility drainage to comply with the DWRR requirements for discharge of oil-contaminated dike water.

VII. 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 195 such requests were fielded from May, 2003 to October 1, 2004.

VIII. Other AST Sites & SPCC Plans Reviewed by Request from Others

Occasionally, program staff receive requests from other DEP staff or other state agency staff to review projects with AST facilities. From April, 2003 through August, 2004 program staff reviewed four AST sites for the Maine Land Use Regulation Commission (LURC), three sites for other DEP staff (one for the Bureau of Land & Water Quality, and two for the BRWM), and one site for the State Fire Marshal's Office. Program staff reviewed a total of four SPCC plans associated with these projects.

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

SPCC program staff consult on a regular basis with staff at the U.S. EPA, primarily the New England Regional Office in Boston, but occasionally the EPA headquarters in Washington. SPCC program staff contacted EPA staff approximately 40 times for clarification on a range of topics including integrity testing, secondary containment requirements, overfill requirements, dike permeability standards, disposing of dike water, oil-containing equipment, facility drainage requirements, federal spill reporting requirements, and deadlines for complying with the SPCC rules. Inquiries to the EPA were either about SPCC requirements in general, or about how certain SPCC requirements would apply to a specific facility. Contacts with the EPA staff were via telephone and e-mail.

X. Communication & Coordination with the Maine State Fire Marshal's Office

SPCC Program staff consult with the State Fire Marshal's Office when questions arise about the NFPA codes as they pertain to AST facilities. When conducting the technical assistance site visits, program staff generally check to see if the AST facility has a valid permit from the Fire Marshal's Office. Occasionally, program staff are unable to locate a valid permit for the facility, in which case the owner is advised to contact the Fire Marshal's Office.

XI. Regulated Community's Assessment of the SPCC Program

A. SPCC Training Seminars, Fall 2003:

Attendees at the DEP's four training seminars were asked to complete course evaluations at the end of each seminar. DEP staff received 106 completed surveys from the 181 people who attended for a 59% response rate. Attendees were asked to rank the following on a scale of 1 to 10 with 1 being poor and 10 being excellent: the Powerpoint presentations, photographs and graphics used in the presentations, EPA staff presentation (Portland only), DEP staff presentations, and Jacques-Whitford staff presentations. Generally, the presentation materials and staff presentations were ranked in the range of 7 to 9, with a ranking of 8 being the most common for all categories. Below is a summary table of responses. Responses by category and ranking are shown as a percentage of the total number of responses received for a given category.

Survey Results for SPCC Training Seminars, Fall 2003

Ranking ▶ Category ▼	1	2	3	4	5	6	7	8	9	10
Power-point Presen-tations				3%	9%	11%	16%	24%	20%	17%
Photos & Graphics			2%	1%	6%	14%	14%	32%	14%	15%
EPA Presen-tation		4%		7%	4%	11%	11%	39%	11%	14%
DEP Presen-tation			1%	2%	10%	6%	15%	34%	21%	11%
Jacques-Whitford Presen-tation			3%	3%	9%	10%	14%	33%	17%	10%

B. SPCC Technical Assistance Site Visits, Fall, 2003 – Fall, 2004:

Questionnaires soliciting comments on the SPCC technical assistance program were sent out to the 59 facility owner/operators and consultants who were visited by DEP staff. A total of 15 responses were received (a 24% response rate) with 3 responses submitted by bulk plant owner/managers, 7 responses submitted by service station owner/managers, 2 responses submitted by marina owner/managers, 1 response submitted by an airport owner, and 2 responses submitted by consultants. The results of the survey are summarized in the table below.

Survey Results for SPCC Technical Assistance Site Visits, Fall, 2003 – Fall, 2004

Number of Responses▶ *Question* ▼	Total for Category	yes	no	Poor	Fair	Good	Excellent	Not useful	Somewhat useful	Useful	Very useful
Were you aware of the SPCC rule prior to contact with the DEP SPCC program?	13	10	3								
How would you rate the information provided during the technical assistance site visit in explaining the federal SPCC requirements and improving spill prevention and control at your facility?	14				2	5	7				
How useful was the SPCC site visit follow-up letter in helping you understand the federal SPCC requirements and improve spill prevention and control at your facility?	14								2	10	2
Have you visited the DEP's web page for SPCC planning? If so, how would you rate the SPCC web page?	15	5	10	1		1	3				
Have you used the DEP's model SPCC plans? If so, how would you rate the model SPCC plans? (*Note: one "yes" responder did not rate the model SPCC plans)	15	5*	10	1			3				
Have you used the DEP's SPCC guidance document? If so, how would you rate the SPCC guidance document? (*Note: three "yes" responders did not rate the guidance document.)	15	10*	5		1	3	3				

Other comments submitted with the SPCC site visit questionnaires:

"Visit was very informative and follow-up letter was structured in a way that allowed us to fully understand expectations."

"Call for best time to visit site. Give recommendations on things that should be done, not what you would like to see. Your recommendations should be done like the money was coming out of your pocket. Overlaps other agencies."

C. ***Comments from the Maine Oil Dealers Association (MODA) and Other Interested Parties:***

MODA's assessment of the DEP's SPCC program, along with the DEP's response, is attached to this report in Appendix C. Comments from two consultants, Denis St. Peter (CES, Inc.) and Cheryl St. Peter (County Environmental Engineering, Inc.) are attached in Appendix D.

XII. Recommendation to continue the SPCC Program.

As mentioned in Section II, the proposal for state oversight of federal SPCC requirements arises from the work of a task force convened pursuant to PL 1999, c. 714, *An Act Regarding Oil Storage Facilities and Groundwater Protection.* Section 2 of that act required the department to convene a task force to review the existing AST regulatory programs in Maine.

The task force report, which was submitted to this committee in January 2002, clearly showed the need to do more to minimize the number and cost of oil spills from non-residential ASTs. Compliance with the existing federal SPCC requirements promises to meet this need. Among other things, the federal SPCC regulation requires AST facility operators to:

- Identify the spill prevention measures that will be taken at the facility, including inspection procedures and spill control equipment such as containment dikes and overfill devices;
- Identify spill counter-measures that are in place, including spill reporting procedures and available cleanup equipment; and
- Undertake a comprehensive review of the plan every 5 years, including evaluation of more effective prevention and control technology.

Compliance with these requirements, and with existing state requirements for underground piping, are excellent mechanisms to reduce the frequency and severity of oil discharges from aboveground tank facilities. The EPA, however, has limited capacity to inspect Maine facilities for compliance and that is why the DEP has sought authority to administer the federal SPCC regulations. Our purpose is to make better use of an existing federal regulatory tool that was not being fully utilized at the time.

There is nothing in our experience during the first two years of the program to suggest that heightened attention to compliance with SPCC requirements is ill conceived. The State's

economy remains heavily dependent on the availability of oil products and it appears this will be case for the foreseeable future. It is in all our interest to ensure that every precaution is taken to distribute these products safely, with minimal risk to our drinking water resources and the environment. We therefore strongly recommend that section 570-K(5) be amended by striking the last sentence and giving the DEP ongoing authority to oversee compliance with the federal SPCC regulations. Section 5 of the authorizing legislation (PL 2001, c. 605) allows this committee to report out legislation to accomplish this.

Suggested language for removing the sunset provision of 38 M.R.S.A. § 570-K(5) is appended to this report along with suggested language for other legislative changes recommended under Section XIV below.

XIII. Implementation plan for the SPCC Program

If given ongoing authority to oversee compliance with federal SPCC requirements, the DEP plans to take the following steps to exercise that authority:

A. Continue the focus of the program on education, outreach and technical assistance for one more year. This will allow time for SPCC program staff to visit more AST facilities on an outreach basis, further identify issues associated with the regulated AST community in Maine, and better understand how the SPCC requirements affect these facilities. Furthermore, it appears that the federal SPCC regulations are still in a state of flux and may be changed again in the next year or so.

B. After one more year, by January 1, 2006, change the focus of the program from education and outreach to enforcement and compliance. At that time start conducting on-site compliance inspections that include appropriate notice for issues of non-compliance, and requiring corrective actions where needed. Enforcement activities will focus on adequate overfill protection and secondary containment for tanks, and compliance of underground piping with applicable standards of Chapter 691. Although the emphasis of the program will shift at this time, technical assistance will still be a significant component of site inspections.

C. Complete the task of merging of the DEP's and SFMO's tank databases to create a comprehensive list of all AST and UST facilities in the state (see Section IV.B.1 above).

D. Conduct another series of SPCC training seminars. This second series of seminars could have a more technical focus than the initial series of training seminars. Along with this, it may also be beneficial to target each training session to a particular type of facility i.e. bulk plants, retail service station, or marina.

E. Follow up on facilities previously visited, particularly those without SPCC plans, to assist facility owners where needed to develop their SPCC plans.

F. Develop a regularly issued newsletter for AST facility owners and operators in Maine to keep them up-to-date on changes in the SPCC regulations and other regulatory issues. The newsletter could be a stand-alone newsletter, or combined with existing newsletters issued by the Department such as the existing tank installers' newsletter

XIV. Other recommended changes to the law governing AST Facilities

In the course of exercising its authority to oversee compliance with SPCC plan requirements, the DEP has identified three issues pertaining to underground piping at AST facilities that we believe should be rectified through legislative changes. The three issues are discussed below.

A. Underground piping installed at AST facilities prior to June 24, 1991 is not required to have leak detection

Underground piping at oil storage facilities is regulated under Chapter 691 of the DEP rules. Chapter 691 currently requires that underground 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 which are designed to reduce product flow when there is a leak of 3 gallons or more per hour.[11] However, underground piping installed at AST facilities prior to June 24, 1991, the effective date of section 570-K(3), must only meet the requirement for being constructed of noncorrosive material.[12] Such piping 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 replaced and brought in compliance with all the requirements of Chapter 691. We recommend that section 570-K(3) be amended to require this older underground piping be brought into full compliance by January 1, 2010. We further recommend that underground piping at AST facilities with pressurized piping systems be equipped with line leak detectors by January 1, 2007, as is currently required for pressurized piping systems at UST facilities.

B. Aboveground oil storage tanks (ASTs) that have underground piping do not have to be registered with the DEP as is currently required of underground oil storage tanks (USTs)

Under section 570-K(3), all underground piping installed at an AST facility after June 24, 1991 must meet the same requirements that apply to USTs. However, DEP staff's ability to determine if underground piping at an AST facility meets these requirements is hampered by the lack of records for AST facilities. Furthermore, when AST facilities with underground piping are sold, the new owners often do not know when the piping was installed. This problem would be rectified by amending 38 MRSA § 563 to require registration of AST facilities with underground piping in the same manner as is currently required for all UST facilities. Registration will enable DEP staff to monitor compliance with Chapter 691 and will benefit AST facility owners, potential buyers of AST facilities, and lending institutions.

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[11] A leak in a pressurized system will generally result in a much greater discharge than an equivalent leak in a suction system since product in the piping is under greater pressure in a pressurized system.

[12] See 38 MRSA 570-K(2), prohibiting the operation of an aboveground oil storage facility after July 1, 1995 unless any underground piping is constructed of cathodically-protected steel, fiberglass or other noncorrosive material.

C. AST facilities do not have to file annual inspection reports for underground piping.

Under 38 MRSA § 563(9), owners and operators of UST facilities are required to have the facility inspected annually by a DEP Certified Tank Installer or Inspector, and to file the inspection report with the DEP. Owners and operators of AST facilities also must arrange for an annual inspection of any underground piping, but are not required to file the inspection report with the DEP. We recommend that they be required to do so by amending subsection 9 accordingly. The filing of annual inspection reports will enable us to ensure that underground piping at AST facilities is being properly maintained.

Suggested language for these recommended legislative changes is appended to this report, including the removal of the sunset provision of 38 M.R.S.A. § 570-K(5) as recommended under Section XII above.

List of Appendices

A. An Act to Facilitate Compliance with Spill Prevention Requirements and Authorize Reimbursement for Certain Oil Spill Remediation Expenses, PL 2001, c. 605, §3

B. Sample SPCC Site Visit Follow-up Letter

C. MODA's Assessment of the SPCC Program (December, 2004) & Letter of Response from Stephen Davis, BRWM Bureau Director to Pattie Aho, MODA (December 30, 2004)

D. Comments Received from Other Interested Parties

E. Suggested Language for Recommended Legislative Changes

Appendix A

An Act to Facilitate Compliance with Spill Prevention Requirements and Authorize Reimbursement for Certain Oil Spill Remediation Expenses
PL 2001, c. 605, §3

APPROVED
APR 03 '02
BY GOVERNOR

CHAPTER
605
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWO

H.P. 1513 - L.D. 2016

An Act to Facilitate Compliance with Spill Prevention Requirements and Authorize Reimbursement for Certain Oil Spill Remediation Expenses

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

Sec. 1. 38 MRSA §569-A, sub-§8, ¶A, as amended by PL 1999, c. 278, §2, is further amended to read:

A. Administrative expenses, personal services and equipment costs of the department related to the administration and enforcement of this subchapter, except that total disbursements for personal services may not exceed ~~$2,250,000~~ $2,900,000 per fiscal year, multiplied by an annual adjustment factor of 4% beginning in fiscal year ~~1999~~ 2002-03;

Sec. 2. 38 MRSA §570-K, sub-§4, as enacted by PL 1993, c. 363, §17 and affected by §21, is amended to read:

4. Exemption. The following aboveground oil storage facilities are exempt from the requirements of ~~this section~~ subsections 2 and 3:

A. Facilities or portions of facilities that are used exclusively for the storage of #2 and other home heating oil and consist of an individual tank of 660 gallons or less capacity or an aggregate tank capacity of 1320 gallons or less; and

B. Facilities containing only liquefied petroleum gas or liquefied natural gas.

Sec. 3. 38 MRSA §570-K, sub-§5 is enacted to read:

5. Spill prevention and control. An aboveground oil storage facility used in the marketing and distribution of oil to others must be operated in compliance with the federal requirements for the preparation and implementation of spill prevention control and countermeasure plans under 40 Code of Federal Regulations, 112 (2001). Failure to comply with those federal requirements constitutes a violation of this Title. If the department believes that a facility's plan does not satisfy those federal requirements, the department shall request an opinion from the United States Environmental Protection Agency as to the legal adequacy of the plan and any amendment necessary to bring the facility into compliance with those federal requirements. The department shall prepare educational and technical materials for use by facilities affected by this subsection. This subsection is repealed October 1, 2005.

Sec. 4. Report. The Commissioner of Environmental Protection shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2005 on all activities undertaken by the Department of Environmental Protection under the provisions of the Maine Revised Statutes, Title 38, section 570-K, subsection 5. That report must include the number of facilities inspected under that subsection; the number of spill prevention and control and countermeasure plans reviewed by the department under that subsection; the number, nature and result of any written communications submitted to the United States Environmental Protection Agency pursuant to that subsection; the number and result of all enforcement actions taken by the department for violations of that subsection; and an overview of the educational and technical assistance efforts undertaken by the department under that subsection. That report must also include a qualitative assessment of the department's effectiveness in implementing that subsection, including an assessment by the regulated community of the department's performance under that subsection.

Sec. 5. Authority to report out legislation. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation to the First Regular Session of the 122nd Legislature on any matter pertaining to the State's enforcement of federal standards pertaining to the preparation and implementation of spill prevention control and countermeasure plans under the Maine Revised Statutes, Title 38, section 570-K, subsection 5.

Sec. 6. Appropriations and allocations. The following

appropriations and allocations are made.

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Remediation and Waste Management

Initiative: Allocates funds to cover additional personal services costs for positions funded by the Ground Water Oil Clean-up Fund.

Other Special Revenue Funds	2001-02	2002-03
Personal Services	$0	$259,303

Remediation and Waste Management

Initiative: Allocates funds for the costs of contracting for consulting services needed to audit for compliance with requirements for the preparation and maintenance of aboveground oil storage facilities.

Other Special Revenue Funds	2001-02	2002-03
All Other	$0	$12,500

ENVIRONMENTAL PROTECTION, DEPARTMENT OF DEPARTMENT TOTALS	2001-02	2002-03
OTHER SPECIAL REVENUE FUNDS	$0	$271,803
DEPARTMENT TOTAL - ALL FUNDS	$0	$271,803

Appendix B
Sample SPCC Site Visit Follow-up Letter

Note: Site visit letters follow a format similar to the one in this sample letter, but are tailored to address the specific issues of each site. This sample letter was sent to a retail service station that has aboveground storage tanks and underground piping. This particular facility did not have an SPCC plan at the time of the site visit. Where a facility does have an SPCC plan, the follow up letter will also include specific recommendations for the facility's spill plan.

Subject: Follow-up to SPCC Technical Assistance Site Visit to ******

Dear ****:

Thank you for meeting with me at ***** on *****. The site visit was conducted as part of the Maine Department of Environmental Protection's Spill Prevention, Control and Countermeasures (SPCC) program to provide technical assistance for owners/operators of aboveground oil storage (AST) facilities. Following up on our site visit, I have these recommendations for your facility:

1. Overfill Protection for the Tanks: Statistics show that overfills are the most common cause of oil spills at aboveground storage facilities in Maine. Furthermore, the federal SPCC rules require that your tanks be provided with overfill protection. At a minimum you will need to install a tank gauge, audible/visual overfill alarm, or automatic shutoff device in each tank in order to meet the federal requirements for overfill protection. If you use tank gauges to meet the federal overfill protection requirements they must be located so that they are readily visible to the delivery person, or if not visible to the delivery person, a second person directly monitors the gauge during filling operations. An audible or visual alarm is set to go off when the tank is at 90% capacity while an automatic shutoff device is set so that it shuts off flow to the tank when the tank reaches 95% capacity. Although the federal SPCC rules require only one form of overfill protection for each tank, I recommend that you consider installing a second form of overfill protection for each tank for extra protection from overfills.

2. Fire Marshal's Permit: A permit from the Fire Marshal's Office is required for your tank installation. The Fire Marshal's Office issued permit **** to ****, the former owner of your facility, in ****. I have enclosed a copy of the permit for your records. If you have any questions about the enclosed Fire Marshal's permit please contact Steve Dixon of the State Fire Marshal's Office at (207) 626-3890.

3. Emergency Venting for the Tanks: Fire codes administered by the State Fire Marshal's Office require that emergency vents be installed in all of your tanks. An emergency vent relieves excess pressure and prevents catastrophic failure of the tank in the event of a fire at the tank. The manways on your tanks may be acceptable as emergency vents under the fire codes administered by the State Fire Marshal's office. However, the bolts on the manway covers need to be left loose enough to allow the manway cover to lift up and release excess pressure in the event of a fire at the tank.

4. Water within the Diked Area: Stormwater accumulating in the diked area should be removed whenever it approaches 10 percent of the volume of the diked area or as necessary to prevent water from reaching the bottom of the tanks or any piping or valves. This is particularly important in cold weather to prevent ice accumulation within the diked area. Under the federal SPCC rules, water may be released from the dike area directly on-site *only if it has no visible sheen.* If the water has a visible sheen it must be treated so that it has no sheen prior to being released, or it must be disposed of off-site by a state-licensed hazardous waste or waste oil contractor. Federal SPCC rules require that you maintain records of when water is discharged or removed from the diked area. The DEP is currently drafting guidelines for managing dike water. These guidelines may be more stringent than the current federal SPCC requirements. I will send you a copy of the dike water guidelines when they are completed.

5. Pressure Relief Valves: I recommend that pressure relief valves be installed in each pipeline exiting the tanks. Install the pressure relief valve in each pipeline downstream of the line leak detector and anti-siphon valve and run the pressure relief line back to the tank above the maximum liquid level of the tank. This will provide relief of pressure build up that may occur during the day when the piping is heated by the sun.

6. Underground Piping: All underground piping at your facility is subject to the DEP's Chapter 691, Rules for Underground Oil Storage Facilities. Your underground piping is double-walled fiberglass piping that is equipped with continuous leak detection. There is an electronic probe in your piping sump that is wired to a console with an alarm. Any product leaking through the primary pipe into the secondary containment piping will drain back into the sump and should be detected by the probe.

   Chapter 691 requires that you or your facility staff monitor the alarm console on a regular basis to see if the system is in alarm. The DEP must be notified within 24 hours if there is any evidence of a possible leak. "Evidence of a possible leak" includes, among others, the leak detection console being in alarm, a drop in the normal product flow rate at the dispenser, pump hesitation or vibration, and product in the piping sump. Actual spills, leaks or discharges must be reported to the DEP within 2 hours.

   Chapter 691 also requires that your underground piping system be inspected annually by a Certified Tank Installer or Certified Tank Inspector. I have enclosed a list of Certified Tank Installers for your reference.

   Please also note that the exposed fiberglass piping, where it transitions to aboveground piping, should be protected from UV degradation in accordance with the manufacturer's recommendations.

7. Secondary Containment for Other Petroleum Storage Containers on Site: As we discussed on site, secondary containment must also be provided for the barrels of waste gasoline. Once a facility triggers the threshold of 1320 gallons of aboveground storage capacity under the federal SPCC rule, all petroleum storage containers that are 55 gallons in size (i.e., a standard barrel) or larger must be addressed in the facility's SPCC plan, and must have secondary containment. You indicated that you would relocate the barrels within the diked area surrounding the tanks in order to provide secondary containment for the barrels.

8. Fencing: The federal SPCC regulations require fencing around your tanks, unless your engineer demonstrates that equivalent protection will be provided by alternative methods.

9. Integrity Testing: Please note that current federal SPCC regulations require that your tanks be integrity tested according to an industry standard, and integrity testing should be addressed in your SPCC plan. Integrity testing is a more thorough inspection than the routine visual inspections done by facility staff, and must be done by a qualified inspector, typically a person certified by either the American Petroleum Institute or the Steel Tank Institute. Integrity testing is done using a non-destructive test method such as ultrasonic testing or a pressure test. Most inspection standards recommend that integrity testing of tanks be done every 10 years.

   Your tanks, being older than 10 years, would be due for integrity testing under most standards. Furthermore, your tanks are showing some evidence of corrosion. You should consult with your engineer about the advisability of integrity testing your tanks. However, please be aware that the EPA may be modifying the integrity testing requirement for certain tanks with less than 30,000 gallons of capacity such as your tanks. Therefore, you may wish to delay the integrity tests of your tanks until further guidance is issued by the EPA on this issue, unless your engineer recommends integrity testing tanks soon due to corrosion or other concerns.

10. Inventory Records: You also asked whether you are required to maintain and reconcile daily inventory records and conduct an annual statistical inventory analysis as is required for underground oil storage facilities. Section 9.2.1 of the National Fire Protection Code (NFPA) 30-A, administered by the State Fire Marshal's Office, requires maintenance and reconciliation of daily inventory records. I recommend that you contact Mr. Dixon about how this requirement pertains to your facility.

As we discussed on site, federal rules and state statute require that you have an SPCC plan in place for your facility. In addition, failure to have an SPCC plan could result in greater financial liability for you in the event that there is a spill at your facility. Specifically, Maine has established the Ground Water Oil Clean-up Fund that provides for the mitigation and removal of oil discharges from facilities such as yours. In the event of a spill, clean-up costs may be covered by this fund for eligible facility owners provided that the facility owner pays a deductible. In your case the standard deductible would be $2500. Failure to implement an SPCC plan could increase your deductible by an additional $5000 dollars.

The SPCC plan includes the following topics: design and construction of the facility for spill prevention and containment; operational procedures to prevent and contain spills; regular inspection and maintenance of the facility; spill response and reporting; employee/operator training; and record keeping. The SPCC plan must be certified by a Professional Engineer. While on site I gave you a copy of the Department's Oil SPCC Plan Guidance Document and model SPCC plan. These documents should help you get started in developing an SPCC plan for your facility. In particular, I would note the following in the model SPCC plan:

Tank inspections and maintenance, Section 3.1.2, Page 3-2 to 3-3: You or a qualified staff person must inspect your tanks, piping and dispenser on a regular basis. Appendix E of the model plan is a sample inspection report.

Employee Training, Section 3.1.3, Page 3-3: Federal SPCC rules require that employees receive training about the SPCC plan, and the spill prevention and response procedures specified in the plan, at least annually.

Emergency Response, Section 3.2, Page 3-4: The DEP must be notified within 2 hours of any spill that occurs at your facility. I suggest that you post a contact list, such as the sample one shown in Appendix A of the model plan, near all telephones at your facility. You should include a spill notification form as part of your SPCC plan, such as the spill notification form attached to the model SPCC plan as Appendix B. The notification form assists the person reporting the spill in providing the necessary information, and provides a record of the spill. Spill response kits should be kept on site, and a list of the kit components incorporated into the SPCC plan. Please see Appendix F of the model plan for some suggested items for a spill response kit.

I have enclosed a partial list of some engineers in Maine who are available for SPCC planning and implementation. This list is not a comprehensive list, and there are other engineers not on the list who are available for SPCC planning and implementation as well. You are not required to use an engineer from the list – any Professional Engineer licensed in Maine could work on an SPCC plan for you.

Please note that the U.S. Environmental Protection Agency administers the federal rules regarding SPCC requirements for AST facilities. These comments are the recommendations of the Maine Department of Environmental Protection only, pursuant to 38 M.R.S.A. section 570-K(5). This letter does not necessarily represent the opinion of the U.S. Environmental Protection Agency nor does it supersede that agency's authority in any way.

Please let me know if you have any questions or if I can provide any further assistance to you in developing an SPCC plan. I would be happy to review a draft SPCC plan for your facility if you wish. I can be reached at (207) 287-4804 or in-state toll free at 1-800-452-1942.

Sincerely,

Sara L. Brusila
Environmental Specialist
Bureau of Remediation
Division of Technical Services

xc: SPCC Site Visit File

Enclosures: SFMO Permit #****
List of Certified Tank Installers
List of PE's for SPCC Planning

Appendix C

MODA's Assessment of the SPCC Program (December, 2004)
&
Letter of Response from Stephen Davis, BRWM Bureau Director to Pattie Aho, MODA (December 30, 2004)

MAINE OIL DEALERS ASSOCIATION

Patricia Aho, Esq. Vice President
P.O. Box 249 Brunswick, ME 04011
207-729-5298

SPILL PREVENTION CONTROL AND COUNTERMEASURE PROGRAM ASSESSMENT BY THE REGULATED COMMUNITY REPORT TO THE LEGISLATURE JANUARY 15, 2005

Background

P.L. 2001 Chapter 605 established an aboveground storage tank program with the Department of Environmental Protection (DEP). The program was the result of a two-year stakeholder group reviewing issues with large non-marine aboveground storage tanks and smaller bulk storage facilities. The law provided DEP with the ability to enforce federal spill prevention control and countermeasure (SPCC) requirements on aboveground storage tanks (ASTs) used in the marketing and distribution of oil. Though there are many other ASTs that are required to follow the federal SPCC law, DEP only has jurisdiction over those used in the marketing and distribution of oil.

The law, among other requirements, established a sunset date of October 1, 2005 and also established a reporting date of January 15, 2005. The Report specifies a number of areas that must be addressed, including a, "...qualitative assessment of the department's effectiveness in implementing that subsection, including an assessment by the regulated community of the department's performance under that subsection."

These comments, submitted by the Maine Oil Dealers Association serves as the assessment by the regulated community as required by Chapter 605.

Introduction of Regulated Community

The Maine Oil Dealers Association (MODA) established in 1954, represents over 450 member companies engaged in all aspects of the petroleum industry. Our

members market, distribute and sell heating fuels, gasoline, and propane, they provide skilled HVAC services, and operate many of the convenience stores in Maine.

MODA served on the two-year AST Stakeholder Group and did not embrace a number of the recommendations that were submitted by the group. The expressed rationale for the legislation in 2001 was that EPA did not have adequate resources to oversee enforcement of the federal program. During the deliberations on the proposed law, it was also noted by DEP that it did not intend to expand the AST program into a "Maine" program, which was duplicative of or contradictory to the federal requirements. MODA was very concerned that the regulated community not be caught between two differing requirements and interpretations of what is considered adequate or required. To that end, the legislation was enacted that made it clear that DEP's role was to provide education and technical assistance and to enforce the federal SPCC regulations, but it was not granted authority to establish other requirements.

Qualitative Assessment of Regulated Community

Overall, the program has provided good education and outreach to some of the regulated facilities. The materials developed and posted on the website are helpful for the very small facilities that aren't as familiar with SPCC requirements. However, since the DEP noted that over half of the facilities visited were not aware of the SPCC regulations (page 8), the educational outreach can be improved.

Though the rationale for the program was to supplement scarce EPA resources, it appears that DEP visits were also scarce. In two years, there were only 52 visits accomplished, even though the Report states that; "Depending on travel time, staff can usually accomplish 3-4 visits in a day". This frankly, begs the question of efficiency and whether it is truly supplementing the EPA program. Additionally, the report does not state how many DEP personnel were required for each visit and how long the DEP required to complete the follow-up paperwork (documentation, letter to the facility, response to facility questions and comments, etc.), so the true costs of this legislation in terms of level of effort and effectiveness cannot be determined.

Some facility owners did have concerns with the method of visitation by DEP. DEP personnel should provide any facility that will be visited with appropriate notification (such as 48 hours). In accordance with the US Department of Transportation Hazardous Materials Security Plan requirements (USDOT Homeland Security; 49 CFR 172.802 (a)(2)), the facilities covered by EPA's SPCC compliance regulation are required to have a security plan to prevent unauthorized access. While this regulation cannot be used to prevent a visit by DEP, prior notification would assist a facility in complying with the USDOT Homeland Security requirements and their security plans. The suggested notification time is not adequate to fix significant issues that may be in violation, so this should not be a concern.

Additionally, it has been suggested that the DEP vehicles be well marked and personnel wear some identifying clothes or badge so that facility owners and/or operators are able to readily identify the persons. This would further assist facilities in complying with USDOT Homeland Security requirements.

One of the program goals is to track ongoing changes to the federal SPCC program. Information is provided on the DEP website that is not consistent with the current federal program. For example, the wrong implementation dates are provided on the website and have not been updated since recent EPA changes have been made. Additionally, EPA has recently solicited comments on proposals to further change the federal SPCC program to make it less onerous for the ultra-small facility. To that end, some mechanism needs to be incorporated to ensure that changes to the federal program are always incorporated by DEP. This is especially crucial since DEP wishes to change its focus from education and assistance to enforcement.

Comments on the Report

The Report does not provide examples nor copies of, the "number, nature and result of" any written communications submitted to the EPA. The regulated community is always concerned with being caught between differing and dueling agency interpretations, and thus the omission of this required material is a concern. During enactment of the law, our concern was that facilities not be caught between varying interpretations, and the Legislature wanted to ensure that this wasn't happening by seeking a review of the materials during the program sunset review period.

By lumping some of the results together, it does not provide a clear picture for the reader. For example, "facilities with no or **inadequate** plans"(emphasis added) begs the question of what is inadequate? It would be clearer to state how many and which type of facility had no plan. This would help to identify where the most significant problems are and to focus efforts in that area. The same concern holds true for the lumping of the "commonly seen problems", - there is a difference between absence of certain equipment and having inadequate equipment, especially if the inadequate equipment can be easily modified or repaired to be adequate.

Of significant concern to us is the issue surrounding Best Management Practices (BMP's) for dike water management. (Page 5). The Bureau indicates that it is developing a standard for the discharge of contaminated dike water that eventually will be shared with the regulated community; our feedback is that this is a particularly difficult and complicated issue that merits discussion prior to the establishment of a standard. There is concern that the 50 ppb concentration the DEP refers to may not be achievable. The standard oil-water separator can remove oil to concentrations of 10 ppm – thus it begs the questions whether the proposed DEP standard will require the replacement of current equipment or the installation of new treatment systems.

Proposed Legislation

1. *Underground Piping*

DEP is proposing legislation that would address underground piping installed prior to June 24, 1991. It is important to understand that this piping was installed pursuant to the law and standards in effect at that time. In places within the report, DEP makes statements that the piping "appeared to be legal", and that the standard is now considered a "regulatory loophole". If the piping in question was installed prior to the 1991 date, then it was installed correctly and legally.

Specific exemptions from the legislation should be made for facilities that have a few short lengths of piping located underground for purposes of dike penetration or to go under facility roads. If the piping is equipped with a containment system with a means of observing the piping for leaks (e.g., sleeved pipes with the sleeve drains to an adequate containment area, etc), these facilities should be exempted.

Additionally there are technical concerns with the feasibility of using line leak detectors for piping that has underground and aboveground components due to changes in pressure. These pressure changes may cause false alarms when the above ground piping expands or contracts at a different rate than the underground piping during typical temperature changes through the course of a day.

Because of these concerns, we believe it is premature to adopt the proposed legislation and would recommend that the DEP be instructed to work and discuss with the regulated community these issues prior to legislation being adopted.

2. *Registration and Inspection of Aboveground Storage Tanks with Underground Piping.*

These issues were debated during the two-year stakeholder process and one result was the requirement that a master database be established that merged the information from the State Fire Marshall's Office, the Emergency Management Agency and the Department of Environmental Protection. The Database allows DEP to have a list of all the AST's and if there are questions regarding underground piping, the DEP may undertake spot visits or inspections. Furthermore, information on the facility layout is contained in the SPCC, thus providing information for potential owners, and for regulators.

3. *Scope of Program*

Throughout the stakeholder process, there was emphasis on aboveground storage tanks that hold gasoline, because of the potential for contaminating groundwater, and for the potential to incur very large remediation costs. In order to provide efficiencies to the program, a suggestion is to limit the scope of the program by removing distillate storage facilities and leaving these to EPA jurisdiction and have DEP focus on gasoline storage facilities.

4. *Sunset Date*

DEP has not proposed an additional sunset date for further program review. We believe that with the EPA SPCC regulations undergoing further change, and with the need for greater efficiencies within state programs, an additional sunset period is warranted. We would recommend a sunset date of October 1, 2007.

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAWN R. GALLAGHER
COMMISSIONER

January 4, 2005

Maine Oil Dealers Association
Attn: Patricia Aho, Esq. Vice President
P.O. Box 249
Brunswick, ME 04011

Subject: 2005 Report to the Maine Legislature re: the Maine DEP's SPCC Program

Dear Pattie:

Thank you for submitting the Maine Oil Dealers Association's (MODA) assessment of the Maine Department of Environmental Protection's (DEP) Spill Prevention, Control and Countermeasures (SPCC) program for aboveground oil storage tank facilities in Maine. I am writing to respond to, and clarify, some of the issues raised by MODA.

1. *Pages 2-3, "Qualitative Assessment of Regulated Community"* – As mentioned in the report, 52 site visits were conducted by the DEP's SPCC program as of October 1, 2004. However, most of 2003 was spent developing the state-wide list of AST facilities, developing the DEP's SPCC web page, developing educational materials, and preparing for the fall 2003 SPCC training seminars. Therefore, most of the site visits (43) cited in the report were done during the 2004 field season. By comparison, the U.S. Environmental Protection Agency conducted 15 site visits in 2002, one site visit in 2003 and 16 in 2004 for a total of 32 for the past three calendar years. The EPA provided information on facility type for 22 of the facilities they visited, and of those 22 only five appear to be covered also by the DEP's SPCC program.

   Most of the SPCC site visits to date have involved two DEP staff persons for several reasons: training DEP staff, developing consistent SPCC site visit protocols, and cross-training with the DEP's underground tanks (UST) unit. In the latter part of the 2004 field season, 13 site visits were conducted by a single DEP staff person. It is anticipated that, generally, one trained DEP staff person could conduct routine SPCC site visits. However, we still believe that there will always be situations where it is beneficial to have two or more DEP staff persons conducting SPCC site visits. Examples of such situations are: sites that have a known history of problems; complex sites; sites where other DEP staff have recently been involved for other purposes (such as a responder working on a recent spill); sites with issues requiring the technical expertise of other DEP staff; and sites that are anticipated to be of a sensitive nature.

   We also looked at our facility records to determine the amount of time from the date of the SPCC site visits to when the follow-up letters were sent. The time ranged from 7 to 53 days, with an average response time of 23 days. Letters for 12 of the facilities were mailed more than 30 days after the site visit, and letters for the remaining 40 sites were mailed 30 days or less after the site visit.

   We have conducted a thorough review of our facility files for all facilities visited to date, and compared the date the appointment for the site visit was made with the facility owner/operator with the date of the site visit. We were able to find notes on the date that appointments were set for all but four of the facilities visited. Of the 52 facilities with records of when the site visit

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: 764-1507

web site: www.maine.gov/dep

appointment was made, all but one had at least five days' notice prior to the site visit. The one exception had two days' notice, but it is important to note that the appointment for that site visit was made by mutual agreement with the facility owner, as is the case with all SPCC site visits. The reason that this facility had a shorter notice is that DEP staff were trying to fill the day's schedule after the owner of another AST facility that day turned out to be unavailable.

We recognize facility owner/manager concerns with proper identification of DEP staff conducting site visits. Upon arrival at a facility, DEP staff first introduce themselves to the facility owner/manager and provide the owner/manager with a staff business card. All DEP staff also carry photo identification cards that can be shown upon request by the owner/manager.

We concur with MODA's comments about keeping the web page up-to-date and thank you for bringing to our attention the outdated deadline dates posted on our SPCC web page. We recently updated all of the documents posted on the web page, and our web page now includes a direct link to the most recent federal regulation with the current federal deadline dates. However, we believe it would be confusing to most facility owners and operators to post information on the DEP web page regarding potential federal regulatory changes that are only being contemplated at this time and are not formally proposed. For those owners, managers, consultants and others who would like more information on contemplated regulatory changes, there is a link on the DEP's web page to the EPA SPCC program's home page where one could obtain the relevant federal documents.

2. *Pages 3 – 4, "Comments on the Report"* – First, thank you for highlighting the importance of maintaining consistency between the federal and state SPCC programs. We have consulted with the EPA, primarily the Region 1 New England Office, whenever there is question or uncertainty in interpretation. We believe we have been consistent with the EPA, and are not aware of any complaints from facility owners we have worked with about conflicting interpretations between the federal and state agencies.

   Secondly, we have clarified "no SPCC plan" versus an "inadequate SPCC plan" on page 7 of the report. All but one of the 31 facilities listed under the "no or inadequate SPCC plan" category actually had no SPCC plan at all. The Professional Engineer certification for the SPCC plan for the remaining facility listed in this category had been withdrawn due to the owner's failure to correct deficiencies listed in the SPCC plan, and that was why the plan was originally listed as "inadequate." The owner of this particular facility asserts that the SPCC plan remains in effect because the certification was withdrawn by the firm that employed the certifying engineer, and was not withdrawn by the certifying engineer himself. DEP staff consulted with EPA staff and was advised that the validity of an SPCC plan in such a situation is questionable at best. In an attempt to clarify, we have placed this facility in its own category: "Facility with an SPCC plan of uncertain certification status" on page 7 of our revised report.

   We agree that the issue of managing dike water should be discussed with the regulated community prior to finalizing any guidelines. We plan to meet with MODA representatives and others within the regulated community prior to progressing any further on drafting these guidelines.

3. *Pages 4-5, "Proposed Legislation"* :

   Underground Piping - We concur with MODA that the underground piping issues need further discussion. These legislative proposals were mentioned in this report to provide an opportunity for further discussion. As with the dike water guidelines being contemplated, we welcome further dialogue with the regulated community on the proposed legislative changes regarding underground piping at AST facilities.

Registration and Inspection of ASTs with Underground Piping - Thank you for noting the AST task force discussions on registration and inspection of AST facilities with underground piping. We agree with the mandate to establish a database of AST facilities in the state, and are in the process of developing that database. We also agree that the question of whether to require registration of AST facilities with underground piping merits further discussion with the regulated community.

Scope of the Program – We respectfully disagree with MODA's suggestion to limit the scope of the state program to gasoline storage facilities. This is because we believe that there would be very minimal oversight of the bulk plants currently covered under the state SPCC program if these types of facilities were removed from the state's jurisdiction and left to the sole jurisdiction of the EPA. Based upon the information provided by the EPA, only two bulk plants were inspected over the three year period from 2002 through 2004.

MODA's assessment, along with this response, is appended to the DEP's report to the Legislature as Appendix C. To minimize confusion, I chose to incorporate most of my response in this letter, rather than by amending the report. However, there is a change to page 7 of the report, as described under Item #2 above. We have also added an Appendix D to the report to incorporate comments received from two consultants since our initial draft report. I have enclosed a copy of the final report for your reference.

Again, thank you for your timely submittal of MODA's assessment of the DEP's SPCC program and comments on the legislative report.

We look forward to further discussions regarding the DEP's SPCC program and other issues pertaining to aboveground oil storage facilities in Maine. If you have additional questions or comments regarding this matter, please do not hesitate to give me a call.

Sincerely,

Stephen K. Davis, P.G.
Director
Bureau of Remediation & Waste Management
Maine Department of Environmental Protection

Enclosure: Report to the Legislature re: SPCC Program, 1/15/05

xc: Jamie Py, MODA
Dawn Gallagher, DEP Commissioner
Deborah Garrett, DEP
George Seel, Director, Division of Technical Services
David McCaskill, DEP
Sara Brusila, DEP

Appendix D

Comments Received from Other Interested Parties

CIVIL ENGINEERING SERVICES, INC.
ENGINEERS & SURVEYORS

December 24, 2004
(Sent Via E-Mail)

Sara L. Brusila
Bureau of Remediation
Division of Technical Services
17 State House Station
Augusta, Maine 04333-0017

Re: Draft DEP Report to Maine Legislature re: the Department's Spill Control & Countermeasures (SPCC) Program

Dear Ms. Brusila:

Civil Engineering Services, Inc. (CES) appreciates the opportunity to review and provide comments on the *Draft Report to the Legislature* regarding the Department's Spill Control & Countermeasures (SPCC) Program dated November 29, 2004. CES has been preparing and certifying Oil SPCC Plans for commercial, industrial, institutional, and governmental facilities for several years. As the certifying Professional Engineer (PE), we have an excellent understanding of USEPA's previous and recently revised Oil Pollution Prevention and Response regulation (40 CFR Part 112) and the conditions at various types of oil storage facilities. As an engineering company practicing within the State of Maine, we also have working knowledge of the State statutes and regulations related to oil storage facilities. Therefore, we believe that we can provide valuable input to the Department and Legislature on the State's SPCC Program.

CES' comments on the Draft report are provided below. Our comments primarily come from our perspective as an engineering company who prepares and certifies SPCC Plans and not as a regulated AST facility.

1. **Section III. The Problem: Historical Spill Data and Cleanup Costs Associated with ASTs:** A reference for the cleanup costs and percentages associated with ASTs at service stations and bulk plants that are discussed in this report should be provided. In addition, for credibility of the Department's SPCC Program, the cost information and details of each spill should be included as an appendix to this report or at least made available to interested parties. For example, of the 415 spills and $3.4 million spent at service stations and bulk plants, how much was spent to cleanup spills at AST facilities versus UST facilities, spills from overfilling, spills from leaking above ground or below ground piping, discharges of contaminated stormwater from containment systems, etc.? This type of information would provide assistance in establishing priorities for the State's SPCC program and help support or refute the Department's recommendations provided later in the report. A statement is made concerning an observed

increase in spills during the early 2000's compared to late 1990's. This may be due to an increased compliance with State reporting requirements for small oil spills. The cost information and details requested above would also provide support or refute this statement.

2. **Section IV.B.5. Develop Guidelines & BMPs for Managing Dike Water at AST Facilities:** CES is unclear why this task, developing guidelines for managing dike water, is included within the scope of the State's SPCC program to address the problem outlined in Section III of the report (i.e., excessive cleanup costs associated with AST spills). This issue does not appear to be related to the amount of cleanup costs that are expended from the groundwater fund. In addition, since the governing statute (38 MRSA §570-K(5)) specifically relies upon the federal regulation (40 CFR Part 112) and EPA's interpretation of the federal regulation, developing guidance or positions that go beyond the federal regulation should not be included within the State's SPCC Program.

   Even though the Oil Pollution Prevention regulation (40 CFR Part 112) does not require SPCC Plans to comply with State statutes or regulations, CES does attempt to inform our clients of these requirements when they are applicable. In fact, for many state requirements that are integral to procedures outlined in the plan, such as oil discharge requirements, they are included within our plans. However, in accordance with § 112.3, the owner or operator must prepare an SPCC Plan in accordance with this part (40 CFR Part 112) and a licensed PE must certify that the SPCC plan has been prepared with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part (40 CFR Part 112). Therefore, even though we agree that the discharge procedures outlined in the SPCC Plan should comply with State requirements, an owner or operator and the certifying PE are in compliance with 40 CFR Part 112 with an SPCC Plan that addresses the minimum drainage standards of 40 CFR Part 112. Therefore, MDEP's enforcement effort of storm water discharge requirements beyond the federal SPCC requirements should not be included within the scope of the State's SPCC program.

   In CES' opinion, the development and enforcement of standards for discharging storm water from secondary containment systems that goes beyond the federal SPCC requirements should be addressed under the Maine Pollution Discharge Elimination System (MEPDES) program. If the Bureau of Remediation and Waste Management or any other bureau or division of the Department develops guidelines that require certain discharges to be licensed, the Bureau of Land and Water Quality may not have the resources or the desire to license the discharge. As we understand, David Ladd of the Bureau of Land and Water Quality will be developing the States version of the Multi-Sector General Permit (MSGP) for storm water discharges associated with industrial activities during 2005.

   The second paragraph of the section mentions 15 ppm or less of "petroleum contamination". However, the referenced guidance states 15 ppm or less of "Oil and Grease". The term "Oil and Grease" typically means a specific analytical method where as "petroleum contamination" could mean a number of analytical methods (e.g., TPH, DRO, GRO).

CES was aware of and has utilized the previous version of the *DWRR Waste Discharge Guidance for Oil Terminals and Bulk Plants*. CES has discussed the previous version with Brian Kavanah and Gregg Wood of the Bureau of Land and Water Quality to ensure our understanding of when a bulk plant needed a WDL. The last revision dated August 31, 2004 was just reviewed by CES. Since this revision is referenced in the subject report and appears to have been revised for the purposes of the State's SPCC Program, we are providing our comments here.

A. The applicability of the guidance should be clarified. In one paragraph the guidance appears to be for all AST facilities except home heating oil ASTs and terminals. In another paragraph, AST facilities appear to be limited to gasoline service stations and convenience stores. Does this apply to 55 gallon drums, oil transformers, operational equipment, 1,000 gallon diesel tanks, hydraulic cylinders and associated tanks, #2 Fuel tanks at universities, etc.? There are too many examples to list them all.

B. Even though an oil-water separator was specifically mentioned as a BMP in the original guidance, we understood from our conversations referenced above that equivalent BMPs could be used. For example, an equivalent BMP could consist of:

- a containment dike sized to contain a release equal to the capacity of the largest AST plus sufficient freeboard for precipitation (e.g., 25 year storm);
- an inspection of the storm water for a sheen or product layer after an adequate amount of time to allow for phase separation prior to discharge; and
- removal of any sheen or product prior to discharge.

In our opinion, this BMP meets 40 CFR Part 112.8(b), is equivalent to an oil/water separator, and should result in a similar discharge concentration of oil and grease. The regulated facility and the engineer assisting the facility should be provided the flexibility to utilize the most efficient and cost effective method in achieving the standard.

C. The "within 300 feet" criteria that is listed within the guidance appears to be inconsistent with the language used in 40 CFR Part 112.1(b) - "could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110". Even if a facility is located further than 300 feet from a surface water body, an oil sheen or layer must be removed prior to discharging to comply with this part.

3. **Section IV.B.6. Track ongoing changes to federal SPCC regulations, and other pertinent state laws and rules affecting AST facilities:** If the DEP is spending the effort tracking changes and pertinent regulations, the information should also be posted on the MDEP SPCC web site to inform owners, operators and SPCC consultants to improve compliance.

4. **Section V. SPCC Technical Assistance Site Visits, Procedures for Site Visits:** Is the definition of a loading rack that is provided as a footnote an approved EPA definition or an unofficial DEP SPCC program definition used for site visits? A reference should be provided if this is an EPA approved definition. The DEP SPCC Program should be careful not to confuse

specific terminology used in the EPA's regulation to avoid the potential of misinterpretation of the regulation. Based on our last discussion with Don Grant of EPA, this definition does not necessarily match EPA's definition.

5. **Section V. SPCC Technical Assistance Site Visits, Summary analysis of findings during site visits:** Other than the first issue mentioned (i.e., SPCC Plan not in place), the three other most common issues (inadequate overfill protection, emergency venting, and underground piping) discussed in this section are not necessarily violations under 40 CFR Part 112.

   Acceptable overfill protection devices are listed in 40 CFR Part 112.8(c)(8). In addition to the devices provided in this section of the rule, alternative procedures or measures that provide equivalent environmental protection can be used. The deviation rule provided in 40 CFR Part 112.7(a)(2) allows facilities to use alternative procedures or measures that provide equivalent environmental protection as long as the procedures or methods are described in the SPCC Plan. Using the deviation rule for this specific requirement is discussed on page 47127 of the Federal Register, Volume 67, Number 137, July 17, 2002.

   Based on our understanding, emergency venting is not a specific requirement of 40 CFR Part 112. We understand that NFPA 30 and the State Fire Marshal's regulation (16-219 CMR Chapter 34) specify emergency vents to be present in some situations. In accordance with 40 CFR Part 112.8(d)(1), only buried piping installed after August 16, 2002 must be corrosion protected. As discussed in our second comment, the Oil Pollution Prevention regulation (40 CFR Part 112) does not require SPCC Plans and facilities to comply with State regulations or industry standards. CES does attempt to inform our clients of these requirements when they are applicable. However, in accordance with § 112.3, the owner or operator must prepare an SPCC Plan in accordance with this part (40 CFR Part 112) and a licensed PE must certify that the SPCC plan has been prepared with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part (40 CFR Part 112). Therefore, even though we agree that the facilities should comply with State requirements, an owner or operator and the certifying PE are in compliance with 40 CFR Part 112 with an SPCC Plan that addresses the minimum standards of 40 CFR Part 112.

   We would also like some clarification of the existing State's requirements related to underground piping from ASTs since the interpretation provided within the report appears to be different than our understanding. Our understanding is provided below:

   38 MRSA § 570-K(4) provides the following exception from §§570-K(2) and (3):

   A. #2 and other home heating oil in an individual tank of 660 gallons or less capacity or an aggregate capacity of 320 gallons or less capacity; and

   B. Facilities containing only liquified petroleum gas or liquified natural gas.

38 MRSA § 570-K(2) prohibits the operation of all underground piping associated with ASTs that is "not constructed of cathodically protected steel, fiberglass, or other noncorrosive material" after July 1, 1995.

38 MRSA § 570-K(3) requires all new underground piping associated with ASTs to be installed operated, maintained and removed in accordance with §§ 564, 565, and 566-A and 06-096 CMR Chapter 691. When applying these statutes and regulation, some underground piping must meet all the standards (e.g., leak detection) and some piping just need to meet the corrosion protection and compatibility requirements. The terminology used within the statutes and rule includes either "piping", "tank", "facility" or "underground oil storage facility".

In accordance with 38 MRSA § 562-A and 06-096 CMR Chapter 691:

> *Underground oil storage facility," also referred to as "facility," means any underground oil storage tank or tanks, as defined in subsection 22, together with associated piping and dispensing facilities located under any land at a single location and used, or intended to be used, for the storage or supply of oil, as defined in this subchapter. Underground oil storage facility also includes piping located under any land at a single location associated with above ground storage tanks and containing 10% or more of the facility's overall volume capacity.*

Based on our review of the referenced statutes and regulation, only "tanks", "facilities", "underground oil storage facilities", or underground piping associated with above ground storage tanks and containing 10% or more of the facility's overall volume capacity are required to meet all of the requirements referenced statutes and regulation. Therefore, the statements within the Department's report such as underground piping must be "double-walled with continuous leak detection" appear to be incorrect since many underground pipes associated with ASTs are less than 10 % of the facility's capacity

6. **Section XI. Regulated Community's Assessment of the SPCC Program:** Including MODA's comments as an appendix to the report is an excellent idea. Comments from the regulated community including owners, operators, and SPCC consultants should also be included as an appendix to this report.

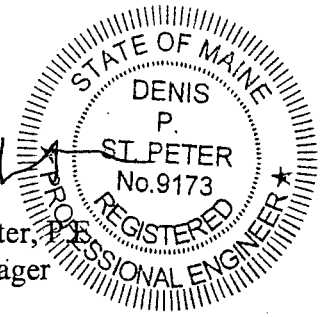
7. **Section XII. Recommendation to continue the SPCC Program:** CES agrees that heightened attention to compliance with SPCC requirements will result in less expenditures from the groundwater fund. However, we recommend an approach that would only expand the State's SPCC program that will actually address the problem outlined in the report (i.e., excessive cleanup costs associated with AST spills). An evaluation of the causes of spills (e.g., spills at AST facilities versus UST facilities, spills from overfilling, spills from leaking above ground or below ground piping, discharges of contaminated storm water from containment systems, etc.) would avoid wasting limited resources on issues that do not address the problem.

8. **Section XIII. Implementation plan the SPCC Program:** Enforcement activities associated with other statutes and regulations (e.g., Chapter 691) other than the SPCC requirements should not be performed or funded under the State's SPCC Program. In addition, if the Department will be preparing and issuing newsletters, SPCC consultants should be included on the distribution list.

9. **Section XIV. Other recommended changes to the law governing SPCC Facilities:** Refer to our other comments concerning clarification of underground piping requirements. Also, any proposed changes to the law, particularly very expensive proposals, should have justification provided. For example, how much of the $3.4 million cleanup costs were spent on underground piping from ASTs?

We appreciate the opportunity to review and provide comments on the *Draft Report to the Legislature* regarding the Department's SPCC Program. If you have any questions, please give me a call at 989-4824.

Sincerely,
CES, Inc.



Denis St. Peter, P.E.
Project Manager

DSP/gdr

Brusila, Sara

From: Cheryl L. St. Peter [countyee@pivot.net]
Sent: Tuesday, December 21, 2004 12:06 PM
To: sara.brusila@maine.gov
Subject: DEP's SPCC Program

Sara,

If you keep a list of engineers in Maine who complete SPCC plans, would you add my contact information below (which has changed since we met)? I received the draft report and have just a couple of comments. I think the list of AST facilities (like the DEP Master UST list) is a GREAT idea (and much needed – it also could be used as a mailing list to provide owners with educational materials, training session dates, and newsletters). I also think the recommended changes to the law are excellent ideas.

You sent me an email some time ago, I believe, regarding inspections of ASTs by owners or certified tank inspectors. I looked for it before I sent this email to you, but couldn't locate it. Do you still have it? If so, could you resend it?

Thank you,

Cheryl L. St. Peter, P.E.
County Environmental Engineering, Inc.
203 Cyr Road
Cross Lake, Maine 04779
Tel: (207) 834-2378, Fax: (207) 834-2388
Email: countyee@pivot.net

Appendix E
Suggested Language for Recommended Legislative Changes

An Act to Improve Regulation of Oil Storage Facilities

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

Sec. 1. 38 MRSA §563, sub-§1, ¶C, is enacted to read:

C. After January 1, 2006, no person may operate, maintain or store oil in an aboveground oil storage tank that has underground piping unless the tank is registered and inspected in accordance with this section. This prohibition does not apply to tanks at an oil terminal facility as defined in section 542, subsection 7, or tanks exempt from regulation under section 570-K, subsection 4

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. Effective June 24, 1991, all new and replacement underground piping ~~All underground piping, whether replacement or new,~~ 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, 2007, pressurized underground piping installed at an aboveground oil storage facility before June 24, 1991 must be equipped with line leak detectors in accordance with department rules. Effective January 1, 2010, all underground piping installed at an aboveground oil storage facility before June 24, 1991 must be fully equipped, operated and maintained in accordance with the leak detection requirements of department rules.

Sec. 3 38 M.R.S.A. §570-K, sub-§5, as amended by PL 2003, c. 245, §19, is further amended to read:

5. Spill prevention and control. An aboveground oil storage facility used in the marketing and distribution of oil to others must be operated in compliance with the federal requirements for the preparation and implementation of spill prevention control and countermeasure plans under 40 Code of Federal Regulations, 112 in effect on April 17, 2003. Failure to comply with those federal requirements in accordance with the deadlines set by the United States Environmental Protection Agency constitutes a violation of this Title. If the department believes that a facility's plan does not satisfy those federal requirements, the department shall request an opinion from the United States Environmental Protection Agency as to the legal adequacy of the plan and any amendment necessary to bring the facility into compliance with those federal

requirements. The department shall prepare educational and technical materials for use by facilities affected by this subsection. ~~This subsection is repealed October 1, 2005.~~

Summary

Section 1 requires aboveground oil storage tanks that have underground piping to be registered with the Department of Environmental Protection and inspected annually in the same manner as currently required for underground oil storage tanks.

Section 2 requires underground piping installed at aboveground oil storage facilities before June 24, 1991 to meet the same leak detection requirements that apply to piping installed after that date.

Section 3 eliminates the repeal date in the law that authorizes the Department of Environmental Protection to enforce federal spill prevention and control regulations at certain aboveground oil storage facilities.