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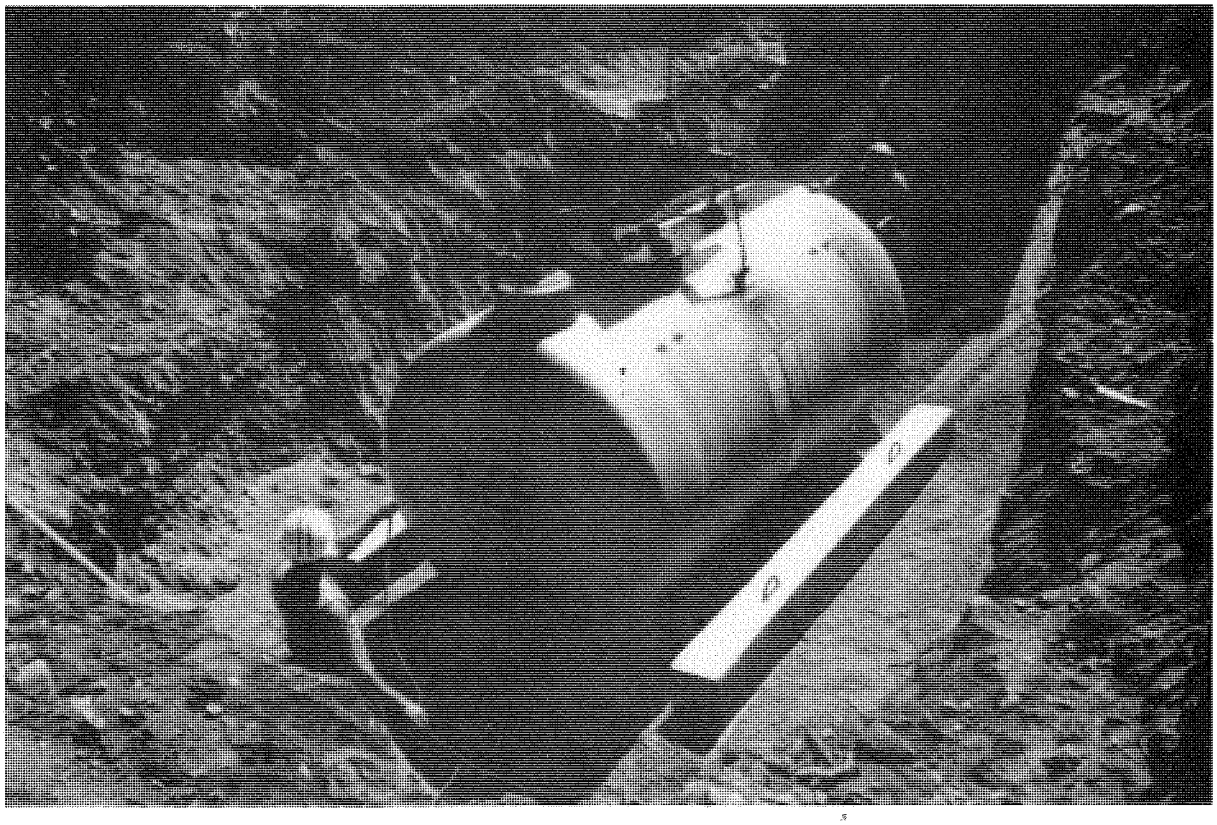
Summary & Assessment of Maine's Underground Storage Tank Installer

Certification Program



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SUMMARY & ASSESSMENT

OF

MAINE'S UNDERGROUND STORAGE TANK INSTALLER

CERTIFICATION PROGRAM

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ACKNOWLEDGMENTS

This report documents the development and operation of Maine's Underground Storage Tank Installer Certification Program; the first of it's kind in the country. It is intended for use as a reference and guidance document by other agencies that regulate underground storage tanks. Two members of the Maine Department of Environmental Protection deserve special recognition for their assistance in this project: Mr. James Hynson, Staff of the Board of Underground Storage Tank Installers; and Mr. George Seel, Director of the Division of Remedial Planning and Technical Services. The authors would also like to thank those individuals who have been involved with Maine's program and were interviewed as part of the program assessment.

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EXECUTIVE SUMMARY

The issue of leaking underground storage tanks (USTs) first received attention by the Maine Legislature in 1983 when it called for planning to be initiated to regulate USTs. In 1985, the Maine Legislature empowered the Maine Department of Environmental Protection (DEP) to issue permits for new and replacement USTs, effective March 1, 1985. The DEP found that proper tank installation could reduce the threat of leaks and concluded that only those persons who have demonstrated competence in tank installation procedures should be allowed to install tanks. Legislation was passed in June of 1985 that required certification of persons providing UST installation services and established a lay Board comprised of seven (7) citizens to administer the certification program. The Legislature also mandated that, effective May 1, 1986, all UST installations must be performed by certified installers.

The Board of Underground Storage Tank Installers (BUSTI) held its first meeting in October of 1985 and began to develop procedures for certifying installers. The first installer's written exam was administered on April 1, 1986. A majority of the practicing installers passed the exam, thereby averting a de facto moratorium on tank installations in 1986.

The Board has made significant progress since it's formation as a result of the commitment of the individual members and the Board's support staff. The following accomplishments have contributed toward the success of Maine's UST installer certification program.

1. The organizational format of the program allows for three-way communication between the Board, the staff, and the installers.

2. The Board promulgated rules in 1988 that set forth the program operating procedures.

3. The Board has obtained technical and clerical support staff persons who are both competent and conscientious.

4. The Board recognized the importance of making technical and program assistance available to the installers, and provided a technical staff person to be that resource.

5. The Board has certified 257 installers to date.

6. The Board members, despite their individual representations, have always been able to reach a consensus on issues and progress has not been impeded.

7. The Board is currently sponsoring legislation that will institute a three-tiered certification classification system and an apprenticeship program. The apprenticeship system will eliminate the need for on-site exams which are currently used to assess an applicant's competency.

Within this report, the installers' certification program has been broken down into specific operating components (i.e. Board, support staff, certification procedures, etc.). The intent of each component has been identified and assessed relative to the manner in which it currently operates. Woodard & Curran's assessment has resulted in recommendations in the following general areas:

1. Maintain a diverse mix of members on the BUSTI.

2. Increase opportunities for communication between the BUSTI and installers.

3. Maintain the recertification training requirements and incorporate mandatory training in the areas of legal liability and ethical practice.

4. Identify the enforcement goals of the program and provide the necessary staffing to achieve those goals.

5. Work toward the passage of the apprenticeship legislation and institute an installer classification system.

In summary, the success of Maine's UST installer certification program and the BUSTI has been illustrated by the Board's ability to accomplish the stated legislative objectives within a limited time frame, and make progress with new program developments each year.

I. INTRODUCTION

From the outset of developing its underground storage tank (UST) program, the Maine Department of Environmental Protection (DEP) recognized that poor installation was a significant cause of leaks from underground tanks. A 1986 U.S. Environmental Protection Agency (EPA) study[1] documented the problem when it found that improper installation was directly responsible for 8% of the reported releases. An additional 46% of releases were caused by structural failure, which included a variety of factors possibly attributable to poor installation such as:

- high water table lifting the tank;
- a vehicle hitting the pump;
- tank rupturing due to careless excavation;
- excessive air pressure during tank tightness test causing a tank rupture; and
- vehicular traffic causing an excessive external load.

This study also found that tank systems that failed in the first 10 years were more likely to have been caused by structural failure, loose fittings, and improper installation than by corrosion. In fact, tank installers estimate that tank piping is damaged between the time of installation and completion of paving on 10% of all installations.[2]

Currently, EPA estimates that there are approximately 2 million UST systems (tanks and piping) nationally, located at over 700,000 facilities, and 10-30% have already had a leak.[2] As a result, EPA recently promulgated 40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks. These regulations contain standards for new and existing UST systems in which certification of installation is required by the UST owner. In order to certify the installa-

tion, the installer must be certified by either the tank and piping manufacturers or the State's implementing (regulatory) agency, or the installation must be certified by either a registered professional engineer or the implementing agency.[3]

UST installations are more technically complex today than in the past. Installers must have specialized skills to competently install cathodic protection systems, ground water monitoring wells, sloped liners, and secondary containment systems. Improper tank installation not only results in leaks, but has also been found to result in erroneous product inventory analyses due to improper tank orientation. In recognition of these problems, the State of Maine developed a program for certifying UST installers in 1985.

The purpose of this report is to summarize Maine's experience with developing an UST installer certification program and assess the program's success. It is intended to be a resource for other states that may have an interest in regulating UST installations. This report is funded by the EPA and consists of:

- a review of the legislative and regulatory history;
- a discussion of current program operations;
- an evaluation of the program components as compared to their original intent; and
- a checklist of issues to be considered in developing an installer certification program for use by other agencies.

II. PROGRAM HISTORY

1. Comprehensive Regulatory Plan for Underground Oil Storage

In 1984 and 1985, the DEP researched and wrote the Comprehensive Regulatory Plan for Underground Oil Storage[4], as mandated by the Maine Legislature (P.L. 1983 c. 785).[5] Among other issues, this document explored various options available to ensure that new tank installations would be conducted according to manufacturers' specifications and DEP regulations. The options were:

1. no action;
2. implement an UST permitting and inspection program; or
3. implement an UST installer licensing or certification program.

The option of doing nothing was discarded because of the questionable capability of installers to install the more sophisticated systems properly. A second option involved implementing a detailed permitting and inspection process. Such permitting and inspection would have required 10 new DEP staff personnel to review detailed permit applications and drawings, and to inspect individual installations.[6] Therefore, it was rejected based on the determination that the Maine Legislature would most likely not fund such an expensive program.

The third option was to have tank installers licensed or certified. Under this option installers would have the responsibility of meeting both the manufacturer's specifications and the DEP's regulatory requirements. A few additional DEP staff people would be necessary to train installers about DEP regulations and industry standards, and to perform spot checks on installations. Licensing or certifying individual tank installers, according to the proposal, would be less expensive than conducting detailed licensing and permit reviews for each facility, while concurrently providing for

the required enforcement of the State's tank installation requirements.[7]

Based on an analysis by Maine's Attorney General, there is no difference between the terms "licensing" and "certification" as long as Administrative Court has the power to revoke something that is granted as a privilege. Professional "registration" in Maine does not incorporate the legal authority to take enforcement action. For these reasons a tank installer certification program was proposed by the DEP and the Staff of the Audit and Program Review Committee to the 111th Maine Legislature in 1985.

2. Legislative Actions

The concept of a tank installer certification program received minimum debate in the Maine Legislature in 1985. This was, in part, because it was one aspect of the DEP's proposed oil storage facility program that the oil industry, the DEP, and environmental groups agreed upon. Discussion revolved around how best to set up a program and who should be responsible for its implementation. While this debate would have normally been centered in the Legislature's Energy and Natural Resources Committee, an overall evaluation of DEP's programs was underway in the Audit and Program Review Committee, and discussions were centered there.

The Audit and Program Review Committee discussed various options available to administer the tank installer program. Traditionally in Maine government, lay Boards have been established to set policy and promulgate regulations for the various state agencies. Boards also judge cases of compliance with the regulations. In keeping with this tradition, the creation of a Board to administer the installer certification program was evaluated and the following six (6) options were considered:

1. House the regulatory body of the tank installers program in the Department of Business Regulation (DBR) by creating a separate board.

2. House the regulatory body of the tank installers program in the DBR and assign their function to an existing board.

3. House the regulation of tank installers in the DBR's Division of Licensing and Enforcement.

4. House the regulation of tank installers in the DEP or the Department of Conservation (DOC) by creating a separate board.

5. House the regulation of tank installers in the DEP or the DOC with the program placed in the most appropriate part of either agency.

6. Create an independent board to regulate underground tank installers.

Option One. The DBR is generally responsible for regulating professionals in Maine. It oversees a number of professional Boards and Commissions such as:

- the Board of Plumber Examinations;
- the Board of Oil and Solid Fuel; and
- the Commission of Real Estate.

Therefore, one option was to house the regulatory body for tank installers in the DBR by creating a separate Board. That Board would have representatives from the DEP; relevant trade groups; the Boards of Geologists and Soil Scientists, Oil and Solid Fuel, and Plumbers; and members of the public.

The advantages of this option were determined to be:

1. DBR already had administrative apparatus in place to oversee, facilitate and coordinate such a professional regulatory Board;

2. Tank installers would be recognized as a unique profession. The creation of a Board comprised of members of affected parties, plus representatives of those Boards whose professions are directly involved in the proper installation of underground tanks, would ensure effective and impartial regulation of these professionals; and

3. The Board process can be beneficial to effective professional regulation. Lay Boards are perceived by the public to render more equitable decisions than those decisions made by professional State employees.

The disadvantages were identified as follows:

1. The DBR may not have had enough physical space in the Department to house another Board; and

2. The regulation of tank installers was an issue dependent upon regulating underground tanks. Given this fact, it would not be advantageous to separate the Board from the regulation of tanks at the DEP.

Option Two. A second option involved housing the regulation of tank installers in the DBR by assigning this function to an existing Board, such as Oil and Solid Fuel, Geologists and Soil Scientists, or Plumbers.

The advantages were found to be:

1. An existing governmental entity would be used;

2. DBR had the framework in place to efficiently regulate professionals; and

3. The Board process could be beneficial to effective professional regulation.

One disadvantage was that this option would have resulted in entrusting a very specific licensing function to a professional regulatory Board that may not have been concerned with regulating tank installers. This situation could result in less than optimal regulation of the installers.

Option Three. The third option called for housing the regulation of tank installers in DBR's Division of Licensing and Enforcement. Advantages included:

1. An existing government body would be used; and

2. DBR had the framework in place to efficiently regulate professionals.

Disadvantages were found to be:

1. Regulatory assignments within this Division are used in those situations where registration is required; and

2. Lack of a Board process may be detrimental to effective regulation of the tank installers.

Option Four. Regulation of underground tank installers would be housed in either the DEP or the DOC by creating a separate Board for that purpose. The composition of the Board would be the same as that in Option One.

Advantages were determined as:

1. Both DEP and DOC have mandates that involve the management of underground tanks, thus the regulation of tank installers by one of these Departments would advantageously use existing expertise; and

2. DEP and DOC both had some experience in professional regulation (e.g., geologists, waste water treatment plant operators, septic tank pumpers).

Disadvantages were:

1. Professional regulation is a task which would be more appropriately housed in a department whose expertise and structure exist to meet this need; and

2. Neither DEP nor DOC is primarily concerned with professional regulation. They may have difficulty in accommodating the particular requirements of a professional regulatory Board.

Option Five. Reponsibility of regulating tank installers would be placed in either DEP or DOC in the most appropriate part of either agency.

Advantages were identified as follows:

1. Existing governmental bodies would be used;

2. Available expertise would be used; and

3. Both DEP and DOC have had some experience in professional regulation.

Disadvantages were:

1. This option lacked a Board process;

2. An existing administrative regulation to effectively deal with professional regulation was lacking; and

3. Such a regulatory process would be best-suited for registration rather than licensing.

Option Six. An independent Board to regulate underground tank installers would be created.

Advantages were:

1. Such a Board would have autonomy;

2. The Board would have a specific purpose and a single focus; and

3. The Board would be able to create and administer their own rules and also take corrective action.

One disadvantage was found, in that the Board would lack support services. In spite of this disadvantage, this last option of creating a separate Board was preferred by both industry and environmental groups. The Audit and Program Review Committee preferred this option because it kept the Board separate from the DEP, and also allowed for the proper checks and balances. To overcome the lack of support services, the Board's staff would be located within the DEP's Bureau of Oil and Hazardous Materials Control (BOHMC), which was responsible for regulation of USTs.

The Committee made this recommendation to the Legislature, the Legislature acted on the recommendation, and thus the "Board of Underground Oil Storage Tank Installers" (BUOSTI) was created when 32 M.R.S.A. (Maine Revised Statutes Annotated) Chapter 105 was signed into law on June 28, 1985 (refer to Appendix A). In later legislation amending Chapter 105[8], the Board was renamed the Board of Underground Storage Tank Installers (BUSTI) and the chapter was renumbered as Chapter 104-A.

The intent of Chapter 105 was stated by the Legislature as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil storage tank installers and to assure the availability of underground oil storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil storage tank installation services."

In addition to the establishment of the BUOSTI, the law provided for the following:

1. Certification of persons working as UST installers consisting of a written or oral exam and successful installation of an UST under the supervision of a DEP examiner. At the time of enactment of the law, installers who had been practicing their trade for at least two years were not required to take an on-site exam, but could choose to take the on-site exam rather than a written or oral exam.

2. Certification of individuals as UST installers rather than businesses or corporations.

3. Certification of DEP employees for the purposes of carrying out their duties as examiners and inspectors.

4. Establishment of a fee system for the certification process.

5. Biennial renewal of an installers certificate through payment of a renewal fee and providing evidence of continuing competency, as determined by the BUOSTI.

6. BUOSTI investigation of complaints and cases of noncompliance with the law or any rules adopted by the Board.

7. The ability of the BUOSTI to take disciplinary action for the following:

   a. the practice of fraud or deceit in obtaining a certificate;
   b. unprofessional conduct such as gross negligence, incompetence, or misconduct;
   c. conviction of a crime involving dishonesty or false statement; or
   d. any violation of Chapter 105 or any rule adopted by the BUOSTI.

8. Reciprocity for Maine residents who have been certified in another state as an UST installer under qualifications equivalent to those in Chapter 105.

3. Board of Underground Oil Storage Tank Installers

Chapter 105 mandated that the BUOSTI be comprised of seven (7) members appointed by the Governor to represent the following groups:

- one from the DEP;
- one from either the Maine Oil Dealer's Association (MODA), the Pine Tree Gas Retailers Association, or the Maine Petroleum Association;
- one tank installer;
- one from the Board of Environmental Protection (BEP);
- one from either the Oil and Solid Fuel Board, the Plumbers Examining Board, or the State Board of Certification for Geologists and Soil Scientists; and
- two members of the public.

The BUOSTI's enabling legislation provided the Board with the authority to :

- adopt rules relating to professional conduct;
- evaluate the qualifications of the applicants for certification;
- establish ethical standards of practice for certified installers; and
- conduct hearings to assist investigations relating to the possible suspension, revocation or denial of certification.

The Board was also allowed to appoint a secretary to keep records and meeting minutes, as well as Board officers as deemed necessary to fulfill its responsiblities.

Also enacted into law during the 1985 legislative session was a requirement that all USTs installed after May 1, 1986 be installed by a certified tank installer.[9] Therefore, the BUOSTI was under pressure to develop certification procedures for tank installers

within 10 months of the passage of the enabling legislation. Unless installers were certified within that time period, an implicit moratorium on tank installations would ensue.

The original BUOSTI members were appointed in September of 1985 and their first meeting was held in October. The Board's initial concerns surrounded the establishment of a certification process rather than the development of regulations. After discussion of statutory mandates, license procedures, and a fee structure; the Board developed an installer certification procedure, discussed in detail in Chapter III of this report.

In 1987, Chapter 105 was amended by "An Act to Expand the Authority of the Board of Underground Storage Tank Installers", thereby placing the responsibility for certification of underground hazardous substance storage tank installers under the BUOSTI. The new law made the following changes to Chapter 105:

- the chapter was renumbered to Chapter 104-A;
- the Board was renamed the Board of Underground Storage Tank Installers (BUSTI) and the BEP member position was replaced with a member from the Maine Chamber of Commerce and Industry;
- installers for underground hazardous substance storage tanks could be certified to both install and remove tanks;
- fees received for underground hazardous substance storage tank installer certification would be deposited into the State's Hazardous Waste Fund; and
- representation of the Pine Tree Gas Retailer Association was eliminated due to the organization's dissolution.

(Author's note: Throughout the remainder of this report the BUOSTI will be referred to as the BUSTI, and Chapter 105 will be referred to as Chapter 104-A.)

4. Maine Board of Underground Storage Tank Installer Rules

Following the development of an installer certification process, the Board and Staff next undertook the process of developing rules which would "codify standard practices for certification and disciplinary action for underground oil storage tank installers and employees of the Department of Environmental Protection, and specify standards of practice for installers." [10]

The enabling legislation mandated that UST installers be regulated through the development of a Board and a certification process. It empowered the Board to adopt rules that would create the framework for the Board's activities. The proposed rules did not attempt to change the manner in which the Board had been conducting its activities. The rules were intended to formalize the certification policies developed by the Board during its first two years and restated the contents of the enabling legislation in regulation form.

The key issue surrounding the development of the rules was the establishment of procedures for processing complaints and conducting disciplinary hearings. The Board's enabling legislation had given the Board the legal authority to enforce the provisions of Chapter 104-A, but had not contained the procedures for doing so. Lacking these procedures, the Board was unable to take enforcement or disciplinary actions against installers who had violated the law without the possibility of a legal challenge by the installer.

Little controversy surrounded the adoption of the Board's rules, since most of the substantive issues had been worked out during the passage of the enabling legislation. A public hearing on the proposed rules was held on March 31, 1988. Public comment periods on the draft rules were available from March 1 to April 11, 1988 and June 15 to July 15, 1988, with final adoption of the rules on July 29, 1988 (refer to Appendix B).

The Chapter 1 Administrative Rules include the following:

- details regarding the Board's organization; specifically, its composition, meetings, records and management of funds;
- minimum requirements for certification of installers and selected DEP employees, and renewal of certification;
- standards of practice for installers including a code of ethics and continuing competency requirements; and
- detailed procedures for enforcement and disciplinary actions that provide for due process and proper notice under the Maine Administrative Procedures Act.

Chapter 2 contains the Rules of Practice and Procedure Governing Adjudicatory Proceedings. It describes the duties of the presiding officer, the role of the Board members, the order of proceedings, and other details relating to the conduct of adjudicatory proceedings.

III. UST INSTALLER CERTIFICATION PROGRAM OPERATIONS

This chapter identifies and discusses the primary components of the program. The intent of each component is presented along with a description of its current operation.

1. Board Organization and Focus Areas

As discussed in Chapter II.C, the Board is comprised of seven (7) members appointed by the Governor to represent the various groups concerned with UST installations. Maine's experience with the use of lay Boards in State government has shown that the differences in the members' backgrounds and areas of representation brings together a variety of viewpoints, and results in equitable representation of the regulated community. The BUSTI members serve a 3-year term and can be reappointed once to serve no more than two (2) consecutive terms. The enabling legislation required the Governor to make the following Board appointments within 60 days of the effective date of the law:

- appoint three (3) members for one (1) year terms;
- appoint three (3) members for two (2) year terms; and
- appoint one (1) member for a three (3) year term.

Varying the length of the initial Board member's terms, would stagger the term expiration dates, so as not to result in seven (7) vacant positions every three (3) years.

Board members serve on a voluntary basis with no compensation other than their travel expenses. The Board is required by law to meet during the first month of each calendar year to select a chairman and, as a minimum, meet at one other time

before year end. In general, the BUSTI conducts meetings on a bi-monthly basis. The Board must have a quorum of four (4) in order to legally conduct its meetings.

The law empowered the Board to administer and enforce Chapter 104-A and to evaluate the qualifications of applicants for certification. To that end, the Board may conduct investigations into complaints or allegations of noncompliance with the law. The Board may also adopt rules relating to professional regulation and standards of ethical practice for certified UST installers. The Board is required to keep records of its business and minutes of its meetings, and to submit to the Commissioner of the DEP an annual report of its operations and finances.

The Board's focus areas have quickly evolved during the past three years due to the deadlines imposed by the legislation. Furthermore, the Maine BUSTI was developing the first UST installer certification program in the country and had no model programs to use as references.

October 1985 - December 1986

From its first meeting on October 17, 1985, the Board's focus was to certify a majority of the practicing installers by the May 1, 1986 deadline. In doing so, they had to ensure that the objectives of the legislation were not compromised by the need to provide a body of qualified installers. The Board met once every three (3) weeks on average during the fall of 1985 and the spring of 1986 in order to meet the deadline.

Issues that were addressed in their early meetings included the following:

- development of an application form and procedures for handling character references;
- type of written exam to be administered (general exam vs. specific subject areas);
- written exam length and format (multiple choice, true and false, fill in the blanks);
- development of written exam questions;
- development of a fee schedule for applications, exams and certification;
- development of a study packet for exam applicants; and
- providing technical training for installers prior to the first exam.

During this same time frame, the Board also formulated procedures and a checklist to be used in administering on-site examinations to applicants who had less than two (2) years experience as installers, or who preferred to take an on-site exam rather than the written exam.

The first written exam was administered on April 1, 1986, with later exams held on April 24 and June 28 of that year. By August 1, 1986, 213 underground oil storage tank installers were certified in Maine. Four of the 213 certified installers had passed the on-site exam in addition to the written exam (the remainder had been "grandfathered" and were not required to take the on-site exam).

January 1987 - April 1988

After certifying a majority of the installers during the first year, the Board's focus turned toward its other administrative duties. The Board began to plan for recertification of the

installers. The law required that installers show evidence of continuing competency, as determined by the Board. The Board decided that installers must complete at least eight (8) clock hours of Board approved continuing education. This, in turn, meant that the Board had to approve or provide continuing education courses or seminars. The Board surveyed the installers to determine what their educational needs were so as to provide seminars that would satisfy those needs. The results of the survey indicated that the following subject areas were most important to the installers:

- DEP tank regulations;
- refresher course on tank installation practices;
- new tank installation technologies;
- ground water monitoring well installation practices;
- shallow to bedrock installation practices;
- federal tank regulations; and
- tank installation problem areas.

A one day, eight (8) credit hour seminar was held by the Board in conjunction with a MODA trade show on April 6, 1988. The program was attended by 219 installers requiring continuing education credit, as well as 80 others.

During this time period the Board became increasingly aware of the need for developing rules that would formalize their policies and establish procedures for enforcement and disciplinary action. The staff was directed to begin drafting regulations for the Board.

Two legislative matters involved the Board during 1987. One bill proposed to expand the Board's authority to cover hazardous substance UST installations, and the other proposed to make the Board an Advisory Board. The Board supported the first bill which did pass, and opposed the second bill which did not pass.

2. Support Staff

Chapter 104-A allows the Board to advise the DEP Commissioner in appointing staff members to support the Board. Support staff was to be located within the DEP under the administrative and supervisory direction of the Commissioner. Staff positions are funded from the Groundwater Oil Clean-up Fund within the DEP. The enabling legislation had intended that the Board's staff would assist the Board in carrying out its duties under the law.

The support staff originally consisted of one technical staff person, a geologist and existing staff member of the BOHMC, who had been instrumental in bringing the problem of leaking USTs and the importance of proper UST installation to the forefront in Maine. When this staff person left the DEP in 1986, the Board debated changing the staff position description from a Geologist to either an Engineer or an Environmental Services Specialist IV (ESS IV). The Board determined that their staff person should have some knowledge of the regulations, the regulatory processes and UST technology; and good administrative skills. An ESS IV position was selected and the DEP undertook the process of changing the position description. The Board also needed a staff person to record the minutes of their meetings, maintain the Board's records and handle a variety of other clerical matters. Rather than appointing a Board Secretary and other officers as provided in the law, the Board voted to establish a secretary's position within the DEP.

Currently the Board's support staff consists of an ESS IV and a Clerk Typist. Additional DEP staff members from the BOHMC have assisted the support staff in conducting on-site exams and in providing investigative support as needed. The support staff's responsibilities are as follows:

ESS IV:
- licensing (written, oral and on-site exams);
- enforcement (investigative support);
- continuing education;
- program development;
- providing technical assistance to the Board and installers; and
- providing legislative and rule-making assistance.

Clerk Typist:
- recording meeting minutes;
- scheduling exams (written, oral and on-site);
- maintaining program files;
- preparing Board and staff correspondences;
- tracking certification fee payments; and
- providing administrative assistance to installers.

During 1988, on-site exams accounted for 85 to 90% of the technical staff's time. Staff time was also devoted to the development and promulgation of the Board's rules; an arduous process that requires the opportunity for public comment and response to those comments before finalizing the rules.

3. Program Interactions

Program interactions between the Board, the staff and the tank installers are represented graphically in Figure 1. This program format is intended to provide opportunities for direct and indirect interactions between all three groups, thereby allowing for the exchange of thoughts and concerns. The Board and staff were intended to be resources for the installers.

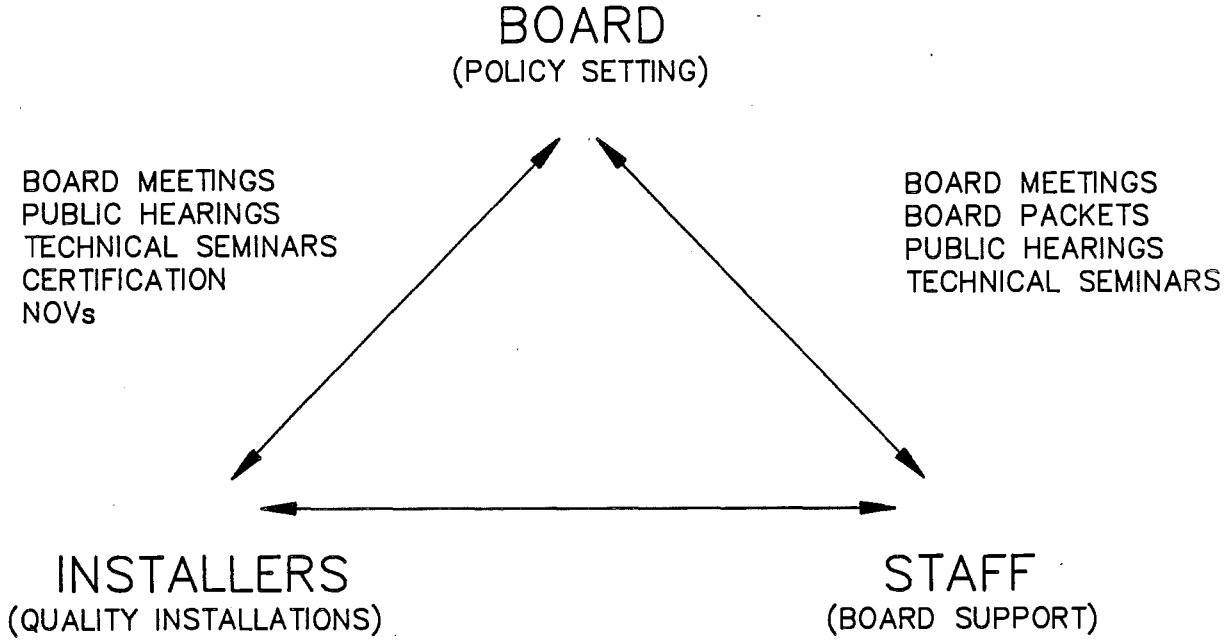
The forums through which opportunities exist for interaction between each group are identified and described below.

Board and Staff:

The Board and staff interact directly at the Board's meetings where administrative and technical issues are openly discussed. The Board provides the staff with direction in carrying out their duties and the staff reports the results of their efforts back to the Board. The results of written and on-site exams are presented, discussed and decisions are rendered by the Board. Staff presents the results of inspections and Notices of Violation (NOV) that have been issued. Legislative and rule-making matters are debated and decided. Technical seminars for continuing education are sponsored and/or attended by the Board and staff, thus allowing for technical information exchange between the two groups.

Staff and Installers:

Interactions between the staff and the installers generally take place one-on-one either in person or over the phone. Technical and program assistance is provided by the staff as needed by individual installers. It is the major responsibility of one Staff Engineer within the BOHMC to



TECHNICAL & PROGRAM ASSISTANCE
EXAMS – WRITTEN, ORAL, ON-SITE
INSPECTIONS
NOVs
TECHNICAL SEMINARS

PROGRAM INTERACTIONS
FIG. 1

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provide on-demand technical assistance to installers. On-site exams and installation inspections are opportunities for exchange of knowledge and demonstration of skills on a one-on-one basis. Written exams and technical seminars are forums for group interaction.

Board and Installers:

Opportunities for individual interaction between the Board and and installers are available through Board meetings and Public Hearings. In these settings, installers are typically either being requested to respond to complaints or are providing comment to the Board on policy or rule-making issues. The certification process is an opportunity for the Board to focus on the qualifications and skills of individual installers. The continuing education requirements for recertification also provide the forum for exchange of technical and administrative information, since some Board members attend the technical seminars with the installers.

4. Certification Procedures

Persons seeking certification as an UST installer must complete a DEP application and provide a minimum of three (3) professional and three (3) personal references. References are required by Chapter 104-A as a demonstration of the applicant's ethical behavior and professional standing. A $35.00 application and examination fee are charged for all applicants, except those with a valid Master Oil Burner Technician license. The Board developed an optional study guide available to applicants at a cost of $35.00. The study guide contains the following documents:

a. American Petroleum Institute (API) Publication #1615, "Installation of Underground Petroleum Storage Systems," November 1987.

b. American Petroleum Institute (API) Publication #1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", December 1987.

c. Petroleum Equipment Institute (PEI), "Recomemnded Practices for Installation of Underground Liquid Storage Systems", RP 100-87.

d. "Owens Corning Fiberglas Underground Storage Tanks, Installation Instructions," Publication No. 3-PE-6304-N, September 1988.

e. Steel Tank Institute (STI) "Installation Instructions for Underground Storage Tanks with STI-P3 Corrosion Control System".

f. Maine Department of Environmental Protection, Chapter 691, "Regulations for Registration, Installation, Operation and Abandonment of Underground Oil Storage Facilities."

The study guide also includes 194 questions with multiple choice answers taken from actual written exams. Listed after each question is the document name indicating the location of the answer.

Following submittal of the completed application to the Board, the application materials are reviewed for completeness, and a determination is made regarding the applicant's experience. The applicant need not be a resident of the State, but must satisfy the following requirements, per Chapter 104-A:

- applicant must be an individual (businesses or corporations may not be certified);
- applicant must have demonstrated ethical practice; and
- applicant must have passed a written or oral exam and completed the successful installation of an underground oil storage tank.

Individuals who had been employed as UST installers or were in the UST installation business for at least two (2) years prior to June of 1985 had the choice of taking the written, oral or on-site exam. This two (2) year "grandfathering" clause was essential to meeting the May 1, 1986 deadline for certification. The Board repealed this clause in the 1987 amending legislation since most installers to whom it applied had been certified.

A score of 80% is required to pass the written or oral exams. A multiple choice exam format was chosen over other types (essay, fill in the blank, true and false) in order to facilitate machine scoring.

An on-site exam is a tank installation performed under the observation of a Board member or a certified DEP staff person (DEP employees can be certified for the purposes of carrying out their duties by passing the written exam with a score of 90%). On-site exams can take two (2) to five (5) days or more for complex installations. The applicant must make all the arrangements necessary for the tank installation such as:

- locating a site for the on-site exam;
- confirming that all local permits have been obtained and that the tank has been registered with the DEP;
- coordinating the delivery of all tank equipment and materials needed for the installation; and
- coordinating the availability of the necessary heavy equipment and labor.

The applicant may receive a provisional certificate for a period of six (6) months following passage of the written exam that is valid only for the on-site exam installation. In this manner, it is unnecessary for a certified installer to also be on-site during the exam period. The Board may extend the provisional certification period for a specific period of time not exceeding an additional three (3) months when extenuating circumstances prevent administration or completion of the on-site exam.

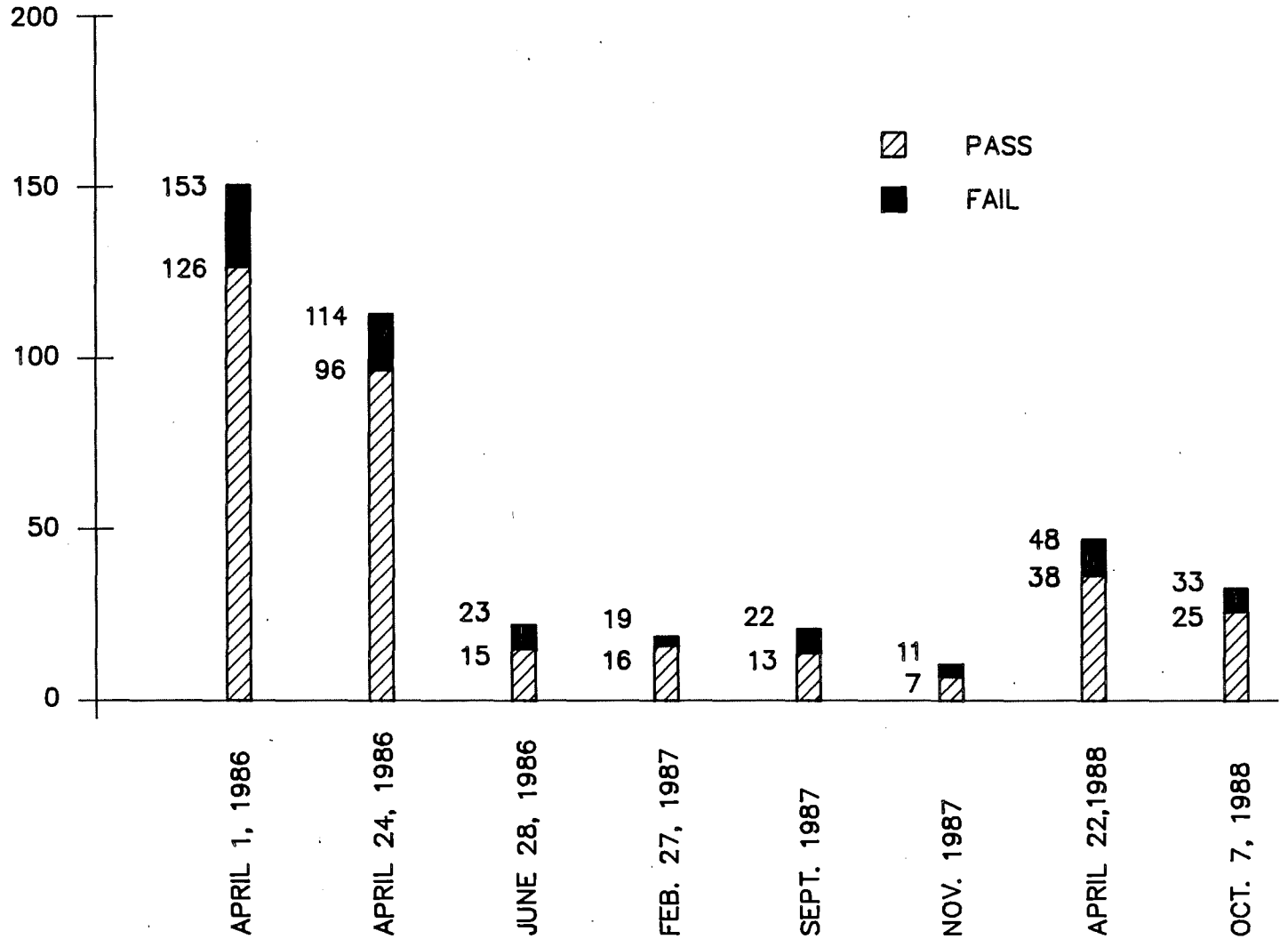
The DEP examiner uses an on-site exam checklist (refer to Appendix C) developed by the Board to assess or grade the installation. The 12 page checklist is also used by the applicant, who must initial each step of the checklist as it is completed. The examiner uses the checklist to form the basis of his or her recommendation to the Board to pass or fail the applicant. The Board makes the final determination

as to the success of the installation. The applicant may refer to any technical references deemed necessary during the exam, however, communication between the applicant and the examiner must be kept to a minimum. Furthermore, the applicant must not be coached or directed by either the examiner or any other person at the site during the exam.

The examiner typically documents the on-site exam using photographs in order to provide the Board with a complete record of the installation. The checklist and photo documentation are a means of ensuring consistency among on-site exams and examiners.

In the event that the examiner determines that the installation is being conducted in a manner that constitutes a threat to public welfare or the environment, he or she may suspend the provisional certification, pending approval by the Board, and stop the installation. If the examiner determines that any step of the installation has been improperly executed, he or she must document it with photographs and then instruct the applicant to correct the mistake.

The bar graph in Figure 2 presents the results of the written exams completed to date, with the number of applicants passing and failing the exam. To date, 36 installers have taken the on-site exam; 24 have passed and 8 have failed (4 others are either pending Board decision or were extended to January of 1989). As of December 1988, there are 257 certified underground storage tank installers in Maine.



RESULTS OF WRITTEN EXAMS

FIG. 2

WOODARD & CURRAN INC.

CONSULTING ENGINEERS

5. Recertification and Continuing Education

Certificates are valid for two (2) years from the date of issuance after which the installer must become recertified. The installer must submit a renewal application prior to the certificate expiration date, or within 30 days of expiration and pay a $10.00 late fee. If a renewal application is submitted more than 30 days after the expiration date, the installer is subject to the application and exam requirements for new applicants.

As part of the recertification procedure, the installer must provide evidence of continuing competency by completing at least eight (8) hours of Board approved continuing education prior to submitting a renewal application. If the Board grants renewal of certification, the installer must pay a $100.00 certification fee (no fee is charged to persons holding Master Oil Burner Technician licenses).

Continuing education offerings must be approved by the Board. Seminars or courses may be sponsored by the Board or by other instructors or sponsors such as trade associations, manufacturers representatives or academic institutions. Outside sponsors must receive approval of their program through the submittal of an application to the Board for consideration. Individual installers may also request continuing education credit for their participation in programs for which the sponsor did not seek approval.

The first Board sponsored continuing education program was held on April 6, 1988 for recertification of the installers who had been originally certified in April of 1986. The one (1) day program was held in conjunction with MODA as part of their annual trade show. The seminar was attended by 219

installers, as well as 80 other individuals. Most of the presentations were videotaped and were later viewed by seven (7) of the installers who were unable to attend the April 6 program.

The Board also approved a seminar sponsored by MODA, entitled "Underground Tank Installer Liability", that was held at three (3) locations during the month of October in 1988. This was the first training seminar approved for recertification credit that was sponsored by an outside instructor.

6. Enforcement and Disciplinary Action

Until the adoption of the Board's rules on July 29, 1988, the Board was unable to undertake enforcement and disciplinary actions. Chapter 104-A empowered the Board to enforce the law but the procedures for doing so had not been set forth and, consequently, an accused installer was not guaranteed his or her due process of law.

The rules established procedures for:

- processing complaints;
- conducting disciplinary actions;
- conducting adjudicatory hearings to assist with investigations;
- referring cases to the state Attorney General's office for judicial enforcement in Administrative Court;
- entering into Administrative Consent Agreements; and
- Maintaining records relative to complaints.

The Board relies on its technical staff as well as available BOHMC staff members to provide enforcement assistance. An inspection checklist is used by inspectors to document their findings (refer to Appendix D). The results of the staff's field inspections indicate the following types of common installation problems:

- insufficient number and placement of monitoring wells;
- less than 360° containment of double-walled tanks;
- absence of line leak detectors;
- insufficient cathodic protection of piping and joints;
- use of improper backfill materials;
- use of old piping;
- insufficient depth of cover; and
- absence of or damage to overfill protection devices.

During 1988, the Board received 10 NOVs and other complaints regarding alleged poor performance by installers, but until the passage of the rules, was unable to take further enforcement or disciplinary actions. The Board is currently undertaking its first enforcement actions in four (4) cases of alleged violation of the law and rules.

7. Apprenticeship

The Board is currently proposing legislation to be submitted in the 1989 legislative session, that would amend the enabling legislation by replacing on-site exams with a certification classification system and an apprenticeship program. The legislation also proposes a three (3) tiered certification system for underground oil storage tank installers:

Class 1 — Could install all types of USTs except field constructed tanks.

Class 2 — Could install any type of UST except field constructed tanks, heavy oil storage tanks, or impressed current cathodically protected tanks.

Class 3 — Could install only #2 heating oil USTs that are not field constructed or equipped with an impressed current cathodic protection system.

Installers currently certified by the Board would be classified as Class 2 installers, until they satisfy the certification requirements for a Class 1 installer.

To be eligible to become certified as an UST installer an applicant would be required to:

- pass an initial written exam for the specific classification desired;
- successfully complete four (4) years of apprenticeship under the direction of the appropriate level certified installer; and
- pass a final written exam specific for the classification.

Applicants for Class 1 certification would have to have four (4) years of apprenticeship under the supervision of a Class 1 certified installer, and would have to complete four (4) UST installations. Of the four (4) required installations, at least one (1) would have to be a heavy oil installation, and one (1) a petroleum retail distribution system.

Applicants for Class 2 certification would have to have four (4) years of apprenticeship under the supervision of a Class 1 or 2 certified installer. They would have to complete at least four (4) installations, at least two (2) of which would have to be retail distribution or other motor fuel storage tanks.

Applicants for Class 3 certification would have to have four (4) years of apprenticeship under the supervision of a certified installer and would have to complete at least four (4) heating oil installations.

The proposed legislation also provides for the Board to grant a variance to the apprenticeship requirements if the applicant can demonstrate training and experience that is comparable to that of an apprenticeship. The apprenticeship legislation does not apply to the certification of hazardous substance UST installers since currently in Maine there are no technical regulations governing such UST systems. Consequently, there have been no hazardous substance UST installers certified.

The intent and advantages of instituting an apprenticeship program are:

- the need for on-site exams is eliminated;
- applicants are experienced prior to becoming certified; and

- by eliminating on-site exams, the support staff will become available to provide assistance in areas of enforcement, education and training, and program development.

One possible disadvantage of an apprenticeship program is that it relies on the assumption that existing Class 1 and 2 certified installers are knowledgeable and ethical. Furthermore, an apprenticeship program would be difficult to implement at the start-up of an installer certification program, since a large number of Class 1 and 2 certified installers must be available to provide supervision.

IV. PROGRAM EVALUATION

This chapter provides an evaluation of the current program operations as compared to the original intent of each program component. The evaluation is based on the following information:

- the results of interviews with individuals representing the following groups:
  a. Board members;
  b. past and present DEP support staff;
  c. installers;
  d. industry representatives; and
  e. other State agency representatives both inside and outside of Maine;
- the results of UST installation and field inspections; and
- an independent critique by the Woodard & Curran Inc. project team.

Woodard & Curran Inc. interviewed 26 individuals to discuss the program components presented in Chapter III. The purpose of the interviews was to evaluate whether the underground storage tank installer certification program as implemented has met, fallen short of, or exceeded the original legislative intent.

This section is formatted such that, for each program component, the results of the interviews, inspections and critique have been incorporated as follows:

A. Positive aspects;

B. Areas for improvement; and

C. Recommendations.

1. Board Organization and Focus Areas

A. Positive Aspects:

1. The Board has set policies and established operating procedures that have been successful in certifying a majority of the practicing installers.

2. The Board's members, while representing different groups, have worked well together. This is evidenced by the fact that within a 10 month time period they achieved the goal of certifying enough installers to avoid a moratorium on UST installations in 1986. Both during and since that time period, the Board has routinely been able to reach a consensus on issues. Their progress has not been impeded due to an inability to make decisions and the installer program has made progress in assuring the availability of quality installation services.

3. The statutory requirement for seven (7) Board members representing all interested parties is perceived by individuals involved in the program as resulting in balanced representation of all parties and equitable Board decisions.

B. Areas for Improvement:

1. Some interviewees felt that the Board membership should include more installers in order to be more responsive to their needs. An installer member is able to provide practical input and, perhaps, best relay to the Board the on-site installation issues that affect installers. The Board currently has only one installer member position. However, to date the Board membership has included more

than one certified installer as a result of the appointments made in other member positions. Therefore, in this case such comments are not substantiated.

2. Implementation of the installer certification program without having the rules set forth resulted in problems associated with taking enforcement action.

3. The Board members need more technical training, and should attempt to keep up-to-date on tank installation technologies and regulatory matters.

C. Recommendations:

1. Future Board member appointments should maintain a diverse mix of individuals for successful representation of the regulated and affected community.

2. Newly appointed Board members should receive some minimal level of training in areas such as:

   - the legislative and regulatory processes;
   - the Board's enabling legislation and rules;
   - the Board's history; and
   - tank installation technologies.

   This could be accomplished through briefings with the support staff, accompanying staff at inspections or on-site exams, and by attending continuing education seminars. By providing new Board members with some technical and administrative training, new members should be able to contribute more readily and effectively to the Board's business, rather than requiring months to "come up to speed."

3. The Board, in its future program developments, should ensure that within the legislative process, time is allotted for the promulgation of the necessary administrative rules prior to implementation of those developments.

2. Support Staff

A. Positive Aspects:

1. The Board's technical and clerical staff has conscientiously supported the Board in carrying out its duties. The staff is instrumental in conducting the day-to-day business of the Board (i.e. certification, technical assistance, record keeping, etc). Furthermore, the support staff has contributed to the Board's accomplishment and the success of the program. The staff's dedication to the program is clearly evidenced by the commitment of time toward on-site exams in 1988. Thirty on-site exams were scheduled between May and December of 1988, translating to three (3) exams per month, on average. On-site exams typically take two (2) to three (3) days to complete and can be located throughout the state.

B. Areas for Improvement:

1. The current staffing level has not been adequate for handling the burden of on-site exams and keeping up with other responsibilities such as recertification training and inspections. During some periods of the Board's history, there had been no technical staff person to assist the Board.

2. The technical staff should have clear lines of responsibility and authority in the areas of conducting inspections and on-site exams, as well as in providing technical interpretations of the rules. There have been a few cases where the staff has provided information that was either inconsistent with the regulations or technically incorrect.

C. Recommendations:

1. The Board should constantly evaluate its staffing needs so as to avoid problems with proper coverage of all staff duties. The Board should provide input into the prioritization of staff time.

2. The technical staff should receive continuing training in the areas of conducting inspections and on-site exams, with a particular emphasis on the limits of their role and the liabilities of exceeding those limits. This type of training could be provided by representatives of the Attorney General's office and should address the following:

   - legal issues relating to conducting and documenting site inspections;
   - identifying the staff's role in providing interpretations of the regulations and technical assistance to installers; and
   - the steps involved with undertaking enforcement action against installers.

3. Program Interactions

A. Positive Aspects:

1. The development of the program with lines of communication between the Board, the staff and the installers has provided the opportunity for open exchange of ideas between all three parties. This communication mode allows the policy-makers to directly reach the regulated community and, perhaps more importantly, the regulated community has the opportunity to communicate directly with the policy-makers.

B. Areas for Improvement:

1. The opportunity for communcation between the Board and the installers exists, however, the installers do not feel that the Board is accessible enough to them. Currently, installers interact with the Board in response to NOVs, in defense of their on-site exam performance, or in response to proposed rules at Public Hearings.

C. Recommendations:

1. The Board should create additional opportunities for positive interaction with installers by increasing the visibility of Board members at recertification training seminars and trade shows, by creating and circulating an installer's program newsletter, and by conducting an occasional survey to elicit program feedback from installers.

4. Certification Procedures

A. Positive Aspects:

1. The written exam screens out those applicants who are unable to attain the minimal technical knowledge necessary to become certified. Furthermore, the number of applicants passing the written exam correlates well with the number of applicants passing the on-site exam.

2. In preparing for the written and on-site exams, applicants must refer to the technical resources and must retain a minimal level of the information to pass the exams.

B. Areas for Improvement:

1. On-site exams are not a worthwhile means of evaluating applicants since:

- they over stress the Board's limited staffing resources and overshadow the performance of other staff duties;
- administration of on-site exams can be inconsistent between examiners and installations;
- the exam can be compromised in cases where the applicant's crew provides assistance or direction;
- the type of installation performed for the exam may not accurately reflect the type and difficulty of installations the installer intends to perform; and
- the DEP could be liable for installations completed as an on-site exam that later result in leaks attributed to improper installation.

2. The written exams are not modified regularly to reflect updates in tank installation technologies and regulatory changes.

C. Recommendations:

1. The Board and staff should continue working towards the passage of the apprenticeship legislation which will eliminate the need for on-site exams, yet still provide the necessary demonstration of an applicant's competency.

5. Recertification and Continuing Education

A. Positive Aspect:

1. The bi-annual recertification requirement gives the Board an opportunity to re-evaluate the continuing competency of each certified installer at a regular frequency. The Board may also use recertification as an opportunity to not renew a certificate in the event that the grounds listed in 32 M.R.S.A. Chapter 104-A Section 10015(2) exist (refer to Appendix A).

2. The continuing education requirement forces installers to participate in seminars in which they may receive needed training in the areas of regulatory and technological changes.

B. Areas for Improvement:

1. Installers need more than one opportunity and one location to attend recertification training seminars.

2. Even though an installer's attendance is required at training seminars, the Board currently has no way of truly evaluating an installer's continued competency.

C. Recommendations:

1. The Board should maintain a file on each installer that tracks the installer's activities (i.e. installations completed, NOVs issued, inspection reports, training seminars attendance, etc.), and should evaluate the installer's track record as part of the continuing competency requirement.

2. Given that the proposed apprenticeship and installer classification legislation would require Class 1 and Class 2 installers to supervise apprentices, the Board should consider establishing more rigorous recertification requirements for those installers. Examples of possible requirements include:

   - increasing the recertification training credit hour requirements;
   - specifying a minimum number and type of installations to be completed within the two (2) year certification period; and
   - administering a recertification exam (such as a written or oral problem-solving exam).

3. The Board should contract with outside organizations to administer the training seminars. Organizations to be considered include:

   - the University of Maine system;
   - the state's Vocational Technical Institutes; and
   - private consultants.

   (Note: Although the Board has been unable as yet to obtain assistance from the University system and the Vocational Technical Institutes, the educational framework exists within these institutions and the interest and expertise could be cultivated in the future.)

4. The Board should specify that installers obtain a minimum number of credit hours in recertification seminars that address their legal liabilities and ethical practice.

6. Enforcement and Disciplinary Action

A. Positive Aspects:

1. Staff inspections have identified incidents of non-compliance with the regulations and resulted in the issuance of NOVs by the DEP. The Board is in the process of taking it's first enforcement action and has not taken any disciplinary actions to date.

2. Staff uses an inspection checklist to evaluate tank installations. The purpose of the checklist is to provide a means of consistently assessing each installation.

B. Areas for Improvement:

1. The Board has not defined what level of enforcement is needed within the program.

2. Given the number of certified installers, additional staff is needed to conduct inspections.

3. Inspector checklists inadequately document the inspection findings due to the following:

- inspectors do not provide sufficient detail of the conditions at the time of the inspection (i.e. what is observable and what is not);
- inspectors are not able to observe all items contained in the checklist, giving the appearance that the checklists are incomplete and ineffective; and
- inspectors do not always indicate what follow-up action is required and undertaken.

C. Recommendations:

1. The Board should determine what level of enforcement is needed within the program. The Board could consider the following suggestions in making their determination:

   - apply enforcement staff resources to the more complex types of installations (i.e. petroleum retail distribution systems, heavy oil systems, etc.);
   - target environmentally sensitive regions of the state to receive more enforcement resources; or
   - target installers with poor track records.

2. The Board should project the number of UST installations in the state relative to the level of enforcement considered to be necessary, to determine the size of the enforcement staff needed.

3. The Board should increase efforts to utilize other groups as their "eyes and ears", such as:

   - Local Code Enforcement Officers;
   - Local Fire Officials; and
   - the UST installation owner (who is ultimately responsible for the UST system).

   This method would require training of these individuals.

4. The Board could, perhaps, minimize the need for enforcement by educating the UST installation owner and the installer about the responsibilities and liabilities that each assume when they undertake an installation. The owner has the greater amount of legal liability and should

be certain that the installer hired to do the job has the qualifications and expertise needed to properly perform the installation.

5. The Board could further minimize the need for enforcement staff resources by requiring installers to provide proof of proper installation in the following manner:
   - requiring submittal of as-built plans following the installation;
   - requiring photo documentation of the installation at key points and submittal of the photographs to the Board; or
   - requiring submission of the signed certification of installation, as required by federal regulation (40 CFR Part 280).

6. The Board could relinquish the enforcement burden altogether by hiring a contractor (consultant) to enforce the regulations. This method is often used by the EPA.

7. The Board should re-evaluate the inspection checklist to determine if it accurately reflects the inspection findings. This evaluation should include a determination by the Attorney General's office regarding the defensibility of the inspection reports. Inspectors should carefully note when the inspection took place, what they were and were not able to observe, and what follow-up action is required.

7. Apprenticeship

A. Positive Aspects:

1. Instituting an apprenticeship program would eliminate the need for on-site exams, which in turn, would free up the support staff to perform its other duties.

2. Under the proposed apprenticeship program, installers would be tested and certified according to their desired classification level. Furthermore, they would not be performing installations outside their classification level.

3. Installers certified under an apprenticeship program would gain experience prior to their certification, rather than after certification.

B. Areas for Improvement:

1. Requiring applicants for certification to train under the supervision of Class 1 or 2 certified installers assumes that those installers are technically knowledgeable and ethical.

C. Recommendations:

1. The Board and staff should continue to work toward the passage of the apprenticeship legislation.

2. The Board should subject Class 1 and 2 certified installers to certification and recertification standards that stress the importance of their technical, legal, and ethical responsibilities as mentors.

V. PROGRAM DEVELOPMENT CONSIDERATIONS

This chapter provides a checklist of issues to be considered in developing an installer certification program. It is intended for use by other regulatory agencies (federal, state or local) who are charged with regulating UST systems and are interested in creating an installer certification program.

1. Policy - Making

a. Establish a policy-making entity; determine on what level it should exist (state or local).

b. Undertake the legislative action necessary to obtain the legal authority to conduct a certification program.

c. Organize the program to allow for open communication/interaction between the policy-makers, staff, the regulated community, and other concerned parties.

d. Promulgate rules that establish program operating procedures; ensure that the rules contain the necessary enforcement and disciplinary procedures.

2. Support Staff

a. Obtain technical, clerical and enforcement staff resources to support the daily program activities.

b. Provide training for support staff.

c. Continually assess support staff needs and priorities.

d. Evaluate all possible sources of support within state and local agencies, educational institutions, and private consultants.

e. When possible, break down the support staff into regional offices.

f. Establish distinct technical and enforcement staff positions to avoid crossover of responsibilities. Technical staff should be a resource to the installers.

g. Maintain records of all program activities.

3. Program Interactions

a. Provide opportunities for direct communication/interaction between the policy-makers, the staff, and the regulated community.

4. Certification Procedures

a. Establish a system of evaluating the qualifications, professional standing, experience and skills of applicants.

b. Determine whether or not state law (or local code) distinguishes between certification, licensing and registration. Select the system that provides enforcement power.

c. Institute an installer classification system and associated certification procedures that reflect the various types of installations and the levels of difficulty.

d. Update exams to reflect new technologies and regulatory changes.

e. Assess whether or not the use of on-site exams is practical.

f. Provide technical training sessions and educational materials to applicants prior to examination.

5. Recertification and Continuing Education

a. Require recertification of installers at a regular frequency.

b. As part of the recertification process, re-evaluate each installer's competency.

c. Require installer's attendance at training seminars.

d. Training seminars should address issues that affect installers such as:

- technical advancements;
- regulatory changes;
- legal liabilities; and
- ethical practices.

e. Track individual installer's work by recording information such as:

- completed installations;
- complaints received and investigated;
- enforcement actions taken;
- participation in training seminars; etc.

Use this information to ascertain the installer's level of activity and competency.

f. Coordinate the administration of recertification training seminars with educational institutions and trade organizations.

6. Enforcement and Disciplinary Action

a. Establish enforcement and disciplinary action procedures within rules early on in the program development.

b. Identify the level of enforcement needed within the program.

c. Establish á distinct enforcement staff capable of providing the necessary level of enforcement.

d. Develop a system for conducting and documenting inspections in a consistent and legally defensible manner.

e. Provide training for enforcement staff members.

f. If necessary, regionalize the enforcement staff.

g. Evaluate the possibility of using local officials as enforcement resources.

h. Educate installers and tank owners regarding their legal liabilities.

7. Apprenticeship

a. Institute an apprenticeship program for installer certification. Consideration must be given to the practicality of using an apprenticeship program at the start of an installer certification program, since a body of certified and knowledgeable installers is necessary to provide supervision.

b. Specify that apprentices complete a specified number of installations within a specific period of time.

Footnotes

1. Versar, Inc. Summary of State Reports on Releases from Underground Storage Tanks. Prepared for U.S. Environmental Protection Agency. 1986

2. Federal Register, Vol. 53 No. 185, September 23, 1988. Preamble to 40 CFR Part 280, p. 37089.

3. Federal Register, Vol. 53 No. 185, September 23, 1988, 40 CFR Part 280 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, p. 37198.

4. Mark Hyland, James Hynson, Marcel Moreau and George Seel. Comprehensive Regulatory Plan for Underground Oil Storage, prepared for Maine Legislature pursuant to P.L. 1983, c. 785; Maine Department of Environmental Protection, 1985.

5. Maine. An Act to Require the Inventory, Permitting, and Monitoring of Underground Tanks Containing Gasoline, Oil and Toxic Materials. P.L. 785, 1983.

6. Mark Hyland, James Hynson, Marcel Moreau and George Seel. Comprehensive Regulatory Plan for Underground Oil Storage; Prepared for Maine Legislature pursuant to P.L. 1983, c. 785; Maine Department of Environmental Protection , 1985.

7. Ibid., p. 57.

8. Maine. Underground Oil and Hazardous Substance Storage Tank Installers, 32 M.R.S.A. Chapter 104-A.

9. Maine. An Act to Amend Certain Provisions of the Oil Discharge Prevention and Pollution Control Act and to Establish a New Act Relating to Underground Storage Facilities. P.L. 496, 1985.

10. Maine Board of Underground Storage Tank Installers. Public Hearing Transcript, March 31, 1988, p.1.

APPENDIX A

CHAPTER 104-A

UNDERGROUND OIL AND HAZARDOUS SUBSTANCE STORAGE TANK INSTALLERS

§ 10001. Declaration of purpose

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil and underground hazardous substance storage tank installers and to assure the availability of underground oil and underground hazardous substance storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil and underground hazardous substance storage tank installation services.

§ 10002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

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

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

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

3-A. **Hazardous substance.** "Hazardous substance" means any substance defined as such in accordance with Title 38, section 1362.

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

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

5-A. **Underground hazardous substance storage tank.** "Underground hazardous substance storage tank" means any tank or container, 10% or more of which is beneath the surface of the ground, together with associated piping and dispensing facilities and which is used or intended to be used for the storage or supply of hazardous substances as defined in subsection 3-A. The term "underground hazardous substance storage tank" does not include tanks or containers, associated piping or dispensing facilities that are located in an underground area where they are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

5-B. Underground hazardous substance storage tank installer. "Underground hazardous substance storage tank installer" means a person certified under this chapter to install and to remove underground hazardous substance storage tanks.

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

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

§ 10003. Board of Underground Storage Tank Installers; establishment; compensation

1. Establishment and membership. There is established within the Department of Environmental Protection, the Board of Underground Storage Tank Installers. The board shall consist of 7 members appointed by the Governor as follows: One from the Department of Environmental Protection; one from either the Maine Oil Dealer's Association or the Maine Petroleum Association; one underground oil or underground hazardous substance storage tank installer; one from either the Oil and Solid Fuel Board, the Plumber's Examining Board or the State Board of Certification for Geologists and Soil Scientists; one from the Maine Chamber of Commerce and Industry; and 2 public members.

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

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

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

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

§ 10004. Board of Underground Oil Storage Tank Installers; powers and duties

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

2. **Rules.** The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375,[1] rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil or underground hazardous substance storage tank installation and removal.

3. **Hearings.** Hearings may be conducted by the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of certification, or as otherwise deemed necessary to the fulfillment of its responsibilities under this chapter. Hearings shall be conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV,[2] to the extent applicable.

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

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

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

§ 10005. Board of Underground Oil Storage Tank Installers; administrative provisions

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

2. **Employees.** With the advice of the board, the commissioner may appoint, subject to the Civil Service Law,[1] such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the department and under the administrative and supervisory direction of the commissioner.

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

§ 10006. Certification

1. **Certification required.** No person may practice, or hold himself out as authorized to practice, as an underground oil or underground hazardous substance storage tank installer in this State or use the words "underground oil storage tank installer" or "underground hazardous substance storage tank installer" or other words or letters to indicate that the person using the words or letters is a certified underground oil or underground hazardous substance storage tank installer practitioner unless he is certified in accordance with this chapter.

2. **Individual.** Only an individual may be certified under this chapter.

§ 10007. Persons and practices exempt

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of:

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

§ 10008. Reciprocity

A person who is a resident of the State and has been certified in another state as an underground oil or underground hazardous substance storage tank installer may, upon payment of a fee as established under section 10012, obtain a certification as an underground oil or underground hazardous substance storage tank installer, provided that a person submits satisfactory evidence of certification as an underground oil or underground hazardous substance storage tank installer in another state under qualifications equivalent to those specified in this chapter.

§ 10009. Certification requirements for persons working as underground hazardous substance storage tank installers

1. **Certification requirements for persons now working as underground hazardous substance storage tank installers.** A certificate may be granted to those persons who have been employed as underground hazardous substance tank installers for at least 2 years prior to October 1, 1987, by one of the following means:

A. If the person has passed an oral test based on Title 38, section 1364, subsection 2, and any rules promulgated under that subsection by the Board of Environmental Protection concerning underground hazardous substances storage facility installations;

B. If the person has passed a written test based on Title 38, section 1364, subsection 2, and any rules promulgated under that subsection by the Board of Environmental Protection concerning underground hazardous substance storage facility installations; or

C. If the person has completed successful installation of an underground hazardous substance storage facility under the supervision of a designated representative of the Department of Environmental Protection.

This section does not apply after April 1, 1989.

§ 10010. Requirements for certification

An applicant applying for certification as an underground oil storage tank installer or an underground hazardous substance tank installer shall file a written application provided by the board, showing to the satisfaction of the board that he meets the following requirements.

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

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

3. **Education and examination for certification of new underground oil storage tank installers.** An applicant must meet the following requirements:

A. He shall have passed a written or oral examination based on Title 38, chapter 3, subchapter II-B,[1] and any rules promulgated thereunder by the Board of Environmental Protection concerning the installation of underground oil storage tanks; and

B. He shall have completed successful installation of an underground oil storage tank under the supervision of a designated representative of the Department of Environmental Protection.

4. **Education and examination for certification of new underground hazardous substance storage tank installers.** An applicant must meet the following requirements:

A. He shall have passed a written or oral examination based on Title 38, section 1364, subsection 2, and any rules promulgated under that subsection by the Board of Environmental Protection concerning underground hazardous substance storage tank installation; and

B. He shall have completed successful installation of an underground hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection.

§ 10010-A. Certification requirements regarding the on-site installation of an underground storage tank under the supervision of a designated representative of the Department of Environmental Protection

To provide for the completion of the on-site installation of an underground oil or underground hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection, the Board of Underground Storage Tank Installers may issue a provisional certificate valid for no more than 6 months after issuance to tank installers who have successfully completed the examination requirements pursuant to section 10010.

When the board determines that reasonable extenuating circumstances prevent the administration or completion of an on-site installation within the 6-month provisional certification period, it may grant one renewal of a provisional certificate for a specific limited time not to exceed 3 months.

The board shall establish a written set of criteria to be used as a checklist by the representative of the Department of Environmental Protection designated to supervise the on-site installation to ensure that each installation is evaluated consistently and equitably.

§ 10010-B. Certification of employees of the department

Employees of the Department of Environmental Protection may be certified for the purposes of carrying out their assigned duties and responsibilities but remain subject to the conditions set forth in Title 5, section 18.

§ 10011. Examination for certification

1. **Requirement fees.** Only a person satisfying the requirements of section 10010, subsections 1 and 2, may apply for examination in such a manner as the board prescribes. The application shall be accompanied by the nonrefundable fee prescribed by section 10012. A person who fails either part of the applicable examination specified in section 10010, subsection 3 or 4, may apply for reexamination upon payment of the prescribed fee.

2. **Content.** The written examination shall test the applicant's knowledge of the skills and knowledge relating to storage tank installation and such other subjects as the board requires to determine the applicant's fitness to practice. The board shall approve an examination for underground oil storage tank installers and underground hazardous substance storage tank installers and establish standards for an acceptable performance.

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

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

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

§ 10012. Fees

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

2. **Disposal of fees.** All fees received by the board related to underground oil storage tank installers shall be paid to the Treasurer of State to be deposited into the Ground Water Oil Clean-up Fund and used for the purpose of carrying out all applicable provisions of this chapter. All fees received by the board related to underground hazardous substance storage tank installers shall be paid to the Treasurer of State to be deposited into the Hazardous Waste Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees in the respective accounts shall not lapse but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

§ 10013. Issuance of certification

The board shall issue a certificate to any person who meets the requirements of this chapter upon payment of the prescribed certification fee.

§ 10014. Renewal of certification

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

2. **Inactive status.** Upon request, the board shall grant inactive status to a certified person who does not practice or present himself as an underground oil tank installer or an underground hazardous substance storage tank installer and maintains any continuing competency requirements established by the board.

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

§ 10015. Investigation; refusal of license or renewal; disciplinary action

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

2. **Disciplinary action; grounds.** The board may suspend or revoke a certificate pursuant to Title 5, section 10004. The board may refuse to issue or renew a certificate or the Administrative Court may suspend, revoke or refuse to renew a certificate of any certified person. The following shall be grounds for an action to modify, suspend, revoke or refuse to issue or renew a certificate:

A. The practice of any fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered within the scope of the certificate issued;

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil or underground hazardous substance storage tank installation or removal, or violation of any standard of professional behavior which has been established by the board;

C. Subject to the limitation of Title 5, chapter 341,[1] conviction of a crime which involves dishonesty or false statement or which relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or

D. Any violation of this chapter or any rule adopted by the board.

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

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

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

APPENDIX B

06-481 MAINE BOARD OF UNDERGROUND STORAGE TANK INSTALLERS

Chapter 1 ADMINISTRATIVE RULES

SUMMARY:

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

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MAINE BOARD OF UNDERGROUND STORAGE TANK INSTALLERS

ADMINISTRATIVE RULES

Section 1. PURPOSE OF RULES

A. Rules.

The Board of Underground Storage Tank Installers hereby adopts rules for conducting the business of the Board, including a statement of purpose of the rules (Section 1), definitions of terms used in the rules (Section 2), provisions for the organization of the Board (Section 3), procedures for processing of applications for certification as an underground oil or hazardous substance storage tank installer (Section 4), provisions setting standards of practice for underground oil or hazardous substance storage tank installers (Section 5), procedures for enforcement and disciplinary actions (Section 6), procedures for processing of requests for advisory rulings (Section 7), and a severability provision (Section 8).

B. Purpose of Rules.

The purpose of these rules is to define standards and clarify the procedures used by the Board in carrying out the provisions of law regulating the practice of underground oil and hazardous substance storage tank installation and removal. It is the overall purpose of the Board to provide for the regulation of persons offering underground oil and hazardous substance storage tank installation services in order to safeguard the public health, safety and welfare, and the environment, to protect the public from incompetent and unauthorized installers, to assure the highest degree of professional conduct on the part of installers and to assure the availability of underground oil and hazardous substance storage tank installations and removals of high quality to persons in need of those services.

Section 2. DEFINITIONS

The following terms, as used in the Underground Storage Tank Installers Act (32 M.R.S.A. Section 10001, et seq.) and the Board's rules (Chapters 1 and 2), shall have the following meanings unless the context otherwise indicates:

A. BOARD means the Board of Underground Storage Tank Installers established under 32 M.R.S.A. Section 10001, et seq.

B. COMMISSIONER means the Commissioner of the Department of Environmental Protection.

C. DEPARTMENT means the Department of Environmental Protection.

D. HAZARDOUS SUBSTANCE means any substance defined as such in accordance with 38 M.R.S.A. Section 1362.

E. INSTALLER means an underground hazardous substance storage tank installer or an underground oil storage tank installer.

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

G. STAFF means employees of the Department appointed by the Commissioner pursuant to 32 M.R.S.A. Section 10005(2).

H. UNDERGROUND HAZARDOUS SUBSTANCE STORAGE TANK means any tank or container, 10% or more of which is beneath the surface of the ground, together with any associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of hazardous substances. The term "underground hazardous substance storage tank" does not include tanks or containers, associated piping or dispensing facilities that are located in an underground area if these tanks or containers, associated piping or dispensing facilities are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

I. UNDERGROUND HAZARDOUS SUBSTANCE STORAGE TANK INSTALLER means a person certified under 32 M.R.S.A. Section 10001, et seq., and these rules to install and remove underground hazardous substance storage tanks.

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

K. UNDERGROUND OIL STORAGE TANK INSTALLER means a person certified under 32 M.R.S.A. Section 10001, et seq., and these rules to install and remove underground oil storage tanks.

Section 3. BOARD ORGANIZATION

A. Composition of the Board of Underground Storage Tank Installers.

The Board consists of seven (7) members appointed by the Governor under the provisions of 32 M.R.S.A. Section 10003. The Board shall elect a chairperson at the annual meeting or when necessary due to the resignation of the chairperson.

B. Meetings.

The Board shall hold its annual meeting during the first month of each calendar year to select a chairperson and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Other meetings may be convened at the call of the chairperson or the written request of any three (3) Board members. The chairperson shall designate the date, time and place of each meeting of the Board. Staff shall give written notice of each meeting to Board members at least seven (7) days before the meeting is to be held. However, in case of an emergency requiring the Board to meet before such written notice can be given, verbal or telephone notification may be given no later than three (3) days before the meeting. A majority of the members of the Board shall constitute a quorum for all purposes.

C. Board Records.

The official office of the Board shall be the Department of Environmental Protection, Bureau of Oil and Hazardous Materials Control. All records, minutes and advisory rulings of the Board shall be kept at that office. Information may be obtained by making a written request to said office or the Board's staff.

D. Management of Funds.

All fees received by the Board related to underground oil storage tank installers shall be deposited in the Board's account within the Ground Water Oil Clean-up Fund, established by 38 M.R.S.A. Section 569. All fees received by the Board related to underground hazardous substance storage tank installers shall be deposited in the Board's account within the Hazardous Waste Fund, established by 38 M.R.S.A. Section 1319-D. Expenditures from said accounts shall be subject to the approval of the Board. An annual report of the operations and financial position of the Board shall be submitted to the Commissioner prior to August 1st of each year pursuant to 32 M.R.S.A. Section 10004(6).

Section 4. CERTIFICATION

A. Underground Oil Storage Tank Installers.

(1) Application. An applicant applying for certification as an underground oil storage tank installer shall file a written application on a form which is approved by the Board, showing to the Board that he or she meets the following requirements:

(a) Individual. An applicant must be an individual. Businesses or corporations may not be certified.

(b) Residence. An applicant need not be a resident of this State.

(c) Character. An applicant shall have demonstrated ethical practice. Such demonstration shall consist of providing to the Board written statements from three (3) personal references and three (3) business references attesting to the applicant's ethical practice. In addition, the Board may conduct a police check and checks with other certification or licensing boards with which the applicant is registered to confirm an absence of violations of Federal, State or local laws and regulations relating to the applicant's ability to practice underground oil storage tank installation in an ethical and competent manner.

(d) Experience. An applicant shall provide the Board with a listing of his or her experience directly involving underground oil storage tank installation and removal.

(2) Written Examination. All applicants for certification, except those for whom the written test has been substituted by an oral examination pursuant to paragraph (5) of this subsection, shall pass a written examination testing the applicant's knowledge of the requirements of 38 M.R.S.A. Section 561, et seq., and any rules promulgated thereunder by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks, the practical skills relating to underground oil storage tank installation and removal, and other subjects as the Board requires to determine the applicant's fitness to practice. Written examinations shall consist of one hundred (100) multiple-choice questions approved by the Board. Scores of 80% or higher shall be considered passing. Written examinations shall be given at least twice each year at

such places as the Board determines, and supervised by one or more of the following: a member of the Board, a member of the staff, or a certified employee of the Department. All persons submitting completed applications since the date of the previous written examination shall be notified by mail at least fourteen (14) days in advance of the time and place of the examination. The Board shall assess a $35.00 nonrefundable fee for the conduct and processing of written examinations, except that no fee shall be charged to persons holding a Master Oil Burner Technician license. This fee is due upon submittal of the application specified in paragraph (1) of this subsection. A person who fails the written examination may apply for reexamination upon payment of the prescribed fee. The Board shall also establish a packet of materials to assist applicants in studying for the written examination. Such packets shall be furnished to applicants upon request at a cost which shall be due at the time of the request. The cost of the packets will be in addition to the written examination fee and will not exceed the actual cost of preparing such packets.

(3) Provisional Certification to Perform Installation at On-site Examination. The Board may issue provisional certification to applicants who have passed the written examination described in paragraph (2) of this subsection or the oral examination described in paragraph (5) of this subsection. Such provisional certification shall only be valid for the installation conducted during the on-site examination described in paragraph (4) of this subsection and is only valid for a period of six (6) months following notification of the applicant's passing of the written or oral examination. When the Board determines that reasonable extenuating circumstances prevent the administration or completion of an on-site examination within the six (6) month provisional certification period, it may grant one renewal of a provisional certificate for a specific limited time not to exceed three (3) months.

(4) On-site Examination. All applicants for certification shall pass an on-site examination consisting of a successful installation of an underground oil storage tank under the supervision of a designated and certified employee of the Department. The installation shall be assessed using a checklist, approved by the Board, of proper procedures for underground oil storage tank installation. Upon completion of the checklist, the certified employee of the Department shall present his or her finding to the Board, with a recommendation as to whether or not the applicant passed the examination. The Board shall make the final determination as to the success

of the installation. The Board shall assess a $100.00 nonrefundable fee for the conduct and processing of on-site examinations, except that no fee shall be charged to persons holding a Master Oil Burner Technician license. This fee is due upon scheduling of the on-site examination. The applicant is responsible, subject to approval by staff, for identifying a satisfactory site and date(s) for the on-site examination, and for ensuring that all necessary equipment and materials necessary for the installation are on site prior to the specified date(s). The designated and certified employee of the Department may suspend the on-site examination at anytime if he or she determines that the installation being conducted constitutes a threat to public health, safety and welfare or the environment.

(5) Oral Examination. Only applicants who demonstrate to the Board that the written examination would not provide an equitable test of their underground oil storage tank installation knowledge can take the oral examination. The circumstances under which the Board will consider substituting an oral examination for the written examination include but are not limited to physical handicap or where English is not the applicant's first language. Such oral examination will test the applicant's knowledge of the requirements of 38 M.R.S.A. Section 561, et seq., and any rules promulgated thereunder by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks, the practical skills relating to underground oil storage tank installation and removal, and other subjects as the Board requires to determine the applicant's fitness to practice. Such examination shall be scheduled and located by mutual consent between the qualified applicant and the Board. The oral examination shall be administered by at least one member of the Board. The test shall consist of one hundred (100) multiple-choice questions identical to those developed for the written examination (paragraph (2) of this subsection), and a score of 80% or better shall be considered passing. The Board shall assess a nonrefundable fee of $35.00 for the conduct and processing of oral examinations, except that no fee shall be charged to persons holding a Master Oil Burner Technician license. This fee is due upon scheduling of the examination. A person who fails the oral examination may apply for reexamination upon payment of the prescribed fee.

(6) Certification Prior to the Adoption of these Rules. All persons certified by the Board as underground oil storage tank installers prior to the adoption of these rules shall be considered by the Board to be properly certified under these rules subject to renewal pursuant to paragraph (8) of this subsection.

(7) Reciprocity. An applicant may receive certification without having to meet the application and examination requirements governing new applicants provided that he or she files an application for certification by reciprocity demonstrating to the Board's satisfaction that:

(a) He or she is a resident of the State;

(b) He or she is certified in another state as an underground oil storage tank installer; and

(c) The qualifications for certification in the other state in which the applicant is certified are equivalent to those specified in 32 M.R.S.A. Section 10001, et seq., and these rules, unless the Board has previously determined that such equivalency exists.

(8) Renewal of Certification. Any certificate issued under these rules or prior to the adoption of these rules will expire two (2) years after issuance at which time it must be renewed. In order to receive certificate renewal, the applicant must submit an application for renewal on a form which is approved by the Board prior to the date of expiration of certification or, upon payment of a late fee of $10.00, up to thirty (30) days after the date of certification. Any person who submits an application for renewal more than thirty (30) days after the date of expiration of certification is subject to all application and examination requirements governing new applicants under this subsection, except that the Board may, for good cause and giving due consideration to the protection of the public, waive the requirements governing new applicants if the renewal application is made within two (2) years from the date of expiration. The application for renewal must provide evidence of continuing competency, consisting of at least eight (8) hours of Board approved continuing education which the underground oil storage tank installer has satisfactorily completed since the last certificate was issued or renewed and prior to submission of the application for renewal. The continuing education requirement is more fully described in Section 5(B). The Board may elect to conduct such continuing education and assess reasonable fees to attendees to recover costs of such training. If renewal of certification is granted by the Board, the payment of the certification fee pursuant to paragraph (9) of this subsection must be accompanied by the applicant's prior certificate identification number on the payment.

(9) Issuance of Certification. The Board shall issue a certificate and a certificate identification number to any person who meets the requirements of this subsection upon payment of a certification fee of $100.00, except that no fee shall be charged to persons holding a Master Oil Burner Technician license.

B. Underground Hazardous Substance Storage Tank Installers (Reserved).

C. Employees of the Department of Environmental Protection.

(1) Eligibility of Department Employees for Certification. An employee of the Department of Environmental Protection is eligible to become certified as an underground oil storage tank installer pursuant to this subsection if his or her assigned duties and responsibilities include:

(a) Conducting of on-site examinations pursuant to Section 4(A)(3);

(b) Investigation of discharges of oil potentially related to faulty underground oil storage tank installations; or

(c) Enforcement of Department rules involving underground oil storage tank installation and removal.

(2) Underground Oil Storage Tank Installer Certification. A Department employee shall be certified as an underground oil storage tank installer by the Board if his or her duties and responsibilities include those listed in paragraph (1) of this subsection and if he or she passes the written examination described in Section 4(A)(2) with a passing score of 90% or higher. No fee shall be assessed by the Board for such certification.

(3) Underground Hazardous Substance Storage Tank Installer Certification (Reserved).

(4) Renewal. Any Department employee certified as an installer under this subsection is subject to the renewal requirements of section 4(A)(8), except that the continuing education requirement need not be met as long as the certified employee's duties and responsibilities include those listed in paragraph (1) of this subsection.

(5) Certification Upon Leaving the Department. If a certified Department employee leaves the Department and wishes to engage in the practice of underground oil storage tank installation, he or she must meet the application and on-site examination requirements governing new applicants and must pay the certification fee, except that no on-site examination is required for those former employees whose duties and responsibilities included the conducting of on-site examinations.

Section 5. STANDARDS OF PRACTICE

A. Code of Ethics.

The Board adopts the following code of ethics for underground oil storage tank installers and underground hazardous substance storage tank installers:

(1) Installer's Obligation to the Public.

(a) Installers, in the performance of their services to clients, employers, and customers, shall be cognizant that their first and foremost responsibility is to the public health, safety and welfare, and the environment.

(b) Installers shall perform or undertake only those installations and removals that conform to accepted technical Federal, State and local standards and safeguard the life, health, property, safety and welfare of the public and the environment.

(c) Installers shall notify all authorities as may be appropriate when their professional judgment is overruled by a client, employer, customer, or any other person under circumstances where the life, health, property, safety or welfare of the public or the environment is endangered.

(d) Installers shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony.

(e) Installers shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a complete evaluation of the subject matter.

(f) Installers shall issue no statements, criticisms or arguments on technical matters which are sponsored or paid for by interested parties, unless they explicitly identify the interested parties on whose behalf they are speaking and reveal any interest such interested parties have in the matters.

(g) Installers shall not permit the use of their name or firm name by, nor associate in business ventures with, any person or firm which is engaging in fraudulent or dishonest business or professional practices.

(h) Installers having knowledge of possible violations of this Code of Ethics shall provide the Board information and assistance necessary to the final determination of such violation.

(2) Installer's Obligation to Employers, Clients, and Customers.

(a) Installers shall undertake assignments only when qualified by education or experience in the specific technical practices involved.

(b) Installers shall not affix their signatures or certification numbers to any installations or removals not accomplished under their direct control and personal supervision.

(c) Installers shall make full prior disclosures to their employers, clients or customers of potential conflicts of interest or other circumstances which could influence their judgment or the quality of their service.

(d) Installers shall not accept compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

(3) Installer's Obligation to Other Installers.

(a) Installers shall not falsify or permit misrepresentation of their, or their associates', education or experience. They shall not misrepresent or exaggerate their degree of responsibility in prior assignments or the complexity of said assignments. Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments.

(b) Installers shall not offer, give, solicit or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution with the intent to influence the award of a contract by public authority.

(c) Installers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other installers.

B. Continuing Education Requirement.

(1) Continuing Education Requirement. Beginning with the first application for certificate renewal, each installer shall provide evidence to the Board that at least eight (8) clock hours of Board approved continuing education have been satisfactorily completed since the last certificate was issued or renewed and prior to submission of the application for renewal.

(2) Board Approval of Continuing Education Offerings Required.

(a) The requirement for continuing education will be met only by those continuing education offerings which have been approved by the Board.

(b) Such approval may take the form of:

(i) Program approval granted by the Board to the sponsor or instructor of a continuing education offering;

(ii) Individual requests for credit granted by the Board to an installer for a continuing education offering whose sponsor or instructor did not seek program approval; or

(iii) Blanket approval granted by the Board to continuing education offerings sponsored by the Board or other professional organizations whose standards have been approved by the Board.

(3) Procedures for Board Approval of Continuing Education Offerings.

(a) Program Approval.

(i) Application for program approval shall be made by the sponsor or instructor on forms supplied by the Board.

(ii) Application must be made at least forty-five (45) days prior to the desired effective date of approval.

(iii) The application shall be reviewed by the Board, and notice of approval or denial of program approval shall be sent to the sponsor or instructor.

(iv) Sponsors or instructors denied program approval may seek reconsideration of such decisions within forty-five (45) days of notification of Board denial.

(b) Individual Requests for Credit.

(i) Individual installers may request continuing education credit for participation in offerings for which the sponsor or instructor did not seek program approval.

(ii) Individual requests for credit, on forms supplied by the Board, must be made at least forty-five (45) days prior to the desired effective date of approval.

(iii) The request will be reviewed by the Board, and notice of approval or denial of credit will be sent to the installer.

(iv) Installers denied credit may seek reconsideration of such decisions within forty-five (45) days of notification of Board denial.

(c) Blanket Approval.

(i) Continuing education offerings sponsored by the Board or other professional organizations whose standards have been approved by the Board are accepted without program approval or an individual request for credit.

(ii) Application for blanket approval shall be made by a professional organization on forms supplied by the Board.

(iii) Application must be made at least forty-five (45) days prior to the desired effective date of approval.

(iv) The application will be reviewed by the Board, and notice of approval or denial of blanket approval will be sent to the professional organization.

(v) Professional organizations denied blanket approval may seek reconsideration of such decisions within forty-five (45) days of notification of Board denial.

(4) Proof of Participation. A certificate of satisfactory completion of a Board approved continuing education offering issued by the sponsor or instructor shall constitute sufficient evidence of such satisfactory completion for purposes of meeting the continuing education requirement.

Section 6. ENFORCEMENT AND DISCIPLINARY ACTIONS

A. Procedures for Processing of Complaints.

(1) When the Board receives a written complaint or documentation of enforcement action taken by the Department, or initiates a complaint on its own motion, the staff will open a file under the installer's name. Staff will review the file and correspond with the installer, the complainant, and any other involved parties requesting necessary information.

(2) In the initial correspondence, staff will:

(a) Provide the installer, the complainant, and any other involved parties with a statement of their rights and with an explanation of the Board's rules and procedures for handling complaints;

(b) Seek from the complainant and other relevant parties a specific designation of the statute, regulation, order or license alleged to be violated; and

(c) Seek from the complainant and other relevant parties a factual statement sufficient to inform the installer with reasonable definiteness of the acts or practices alleged to be in violation of applicable law.

(3) When the requested information is received, staff will review the case file and prepare a written summary of the complaint. The written summary of the complaint will be sent to the installer, the complainant and any other involved parties, and will be presented to the Board at its next scheduled meeting.

(4) After considering the case, and prior disciplinary or other actions involving the same installer, the Board will determine whether further disciplinary or other action is to be taken.

(5) If it is determined that no further disciplinary or other action should be taken by the Board on the complaint, staff will notify the parties in writing of the Board's decision.

B. Disciplinary Actions.

Upon a finding that one or more of the grounds listed in 32 M.R.S.A. Section 10015(2) exist, the Board may take the following disciplinary actions:

(1) Refuse to issue a certificate.

(2) Refuse to renew a certificate.

(3) Modify a certificate.

(4) Suspend or revoke a certificate pursuant to 5 M.R.S.A. Section 10004.

C. Adjudicatory Hearings.

(1) The Board may call and conduct adjudicatory hearings to assist with investigations, to determine whether grounds exist to modify, suspend, revoke or refuse to issue or renew a certificate, or as otherwise deemed necessary to the fulfillment of its responsibilities.

(2) Before taking action to modify or refuse to renew a certificate, the Board shall afford the installer an opportunity for an adjudicatory hearing to the extent required by 5 M.R.S.A. Sections 10003 and 10004.

(3) All adjudicatory hearings shall be conducted in accordance with the Maine Administrative Procedure Act (5 M.R.S.A. Chapter 375) and the Board's Rules of Practice and Procedure Governing Adjudicatory Proceedings (Chapter 2).

D. Referral to the Attorney General.

If the Board determines that grounds exist to suspend, revoke or refuse to renew a certificate, it may refer the case to the Attorney General for judicial enforcement in Administrative Court.

E. Administrative Consent Agreements.

(1) Request for Disposal of Proceedings by Administrative Consent Agreement. At any time prior to a scheduled final Board decision to take disciplinary action, an installer subject to such disciplinary action may file with the Board a statement indicating his or her desire to dispose of the complaint by the entry of an Administrative Consent Agreement. On receipt of such statement, the staff shall notify the Board and the installer that any scheduled hearing or final decision has been stayed. Within thirty (30) days after receiving notice of such stay, an agreement agreed to by staff and signed by the installer, and conforming to the requirements of this subsection, shall be submitted to the Board.

(2) Contents of the Administrative Consent Agreement. Every Administrative Consent Agreement shall contain, in addition to an appropriate order, an admission of all jurisdictional facts and express waivers of further procedural steps before the Board, and of the installer's right to appeal. The agreement shall also contain provisions that specify what corrective or remedial steps shall be taken, including suspension or surrendering of the installer's certificate, and that the Administrative Consent Agreement shall not become part of the official record unless and until it is accepted by the Board. In addition, the Administrative Consent Agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the notice.

(3) Disposition of Proposed Administrative Consent Agreement by the Board. Upon receiving a proposed Administrative Consent Agreement, the Board may:

(a) Accept it and issue the order agreed upon;

(b) Reject it, in which case the Board shall send a notice of rejection and a new date for hearing or final decision; or

(c) Take such other action as the Board deems appropriate.

(4) If no proposed Administrative Consent Agreement is received by the Board within the thirty (30) day period prescribed by this subsection, the Board shall proceed as though such Administrative Consent Agreement had been presented and rejected. The provisions of this subsection shall not preclude settlement of the complaint in any other manner.

F. Record Keeping.

(1) All information regarding a complaint will be kept on file in the Department of Environmental Protection, Bureau of Oil and Hazardous Materials Control.

(2) Each complaint file will contain all relevant documents, correspondence, and reports. In order to insure the timely handling of each complaint, a flow sheet will document the date of each request for information, receipt of materials and Board action.

(3) Each file will contain a written summary of the complaint prepared by staff.

(4) If a hearing is held, all written documents and exhibits accepted into the record and the transcript of the hearing will be included in the case file.

(5) Staff will present a summary of all active complaints and their status at each Board meeting, and will prepare an annual report on all complaints handled during the preceding calendar year.

Section 7. ADVISORY RULINGS

A. Authority and Scope.

The Board may issue an advisory ruling pursuant to 5 M.R.S.A. Section 9001 concerning the applicability to an existing factual situation of any statutes or rules it administers. Each request shall be reviewed individually by the Chairperson to determine whether an advisory ruling is appropriate. The Chairperson may decline the request for an advisory ruling when the question is hypothetical, if there is sufficient experience upon which to base a ruling, or for any

other reason deemed proper. The denial of a request may be appealed to the Board within twenty (20) days following the denial.

B. Procedures for Processing of Requests for Advisory Rulings.

(1) Submission. A request for an advisory ruling shall be submitted to the Chairperson in writing and shall set forth in detail all facts pertinent to the question. The Chairperson may require additional information as necessary to complete a factual background for a ruling of the Board.

(2) Acknowledgement. A request for an advisory ruling shall be acknowledged by the Chairperson within ten (10) days of receipt. Within thirty (30) days, the Chairperson shall provide notification that a request for ruling shall or shall not be presented to the Board, or the Chairperson may request additional information which is necessary to determine whether or not an advisory ruling is appropriate. An advisory ruling shall be in writing and shall include a statement of facts or assumptions, or both, upon which the ruling is based. The statement, without reference to other documents, shall be sufficiently detailed to allow understanding of the basis of the opinion. A ruling shall be rendered with the assent of three (3) members of the Board. An advisory ruling shall be signed by the Chairperson of the Board, shall be identified specifically as an advisory ruling, and shall be numbered serially.

(3) Disposition. An advisory ruling shall be mailed to the requesting party and a copy shall be kept by the Board. An advisory ruling is a public document and shall be available for public inspection at the Bureau of Oil and Hazardous Materials Control of the Department. In addition, the Board, as it deems appropriate, may otherwise publish or circulate an advisory ruling.

Section 8. SEVERABILITY

Should any provision of this rule be declared invalid or ineffective by a court decision, the decision shall not invalidate any other provision of this rule.

After a public hearing on March 31, 1988 and open comment periods extending from March 1 - April 11, 1988 and June 15 - July 15, 1988, this rule is adopted this _____ day of _____, 1988.

Authority: 32 M.R.S.A. Section 10004

Accepted for Filing: _____

EFFECTIVE DATE: _____

06-481 MAINE BOARD OF UNDERGROUND STORAGE TANK INSTALLERS

Chapter 2 RULES OF PRACTICE AND PROCEDURE GOVERNING ADJUDICATORY PROCEEDINGS

SUMMARY:

This chapter establishes rules of practice for the Board of Underground Storage Tank Installers to engage in adjudicatory proceedings. Included are: (1) specifications of duties and responsibilities of the presiding officer, (2) definition of the role of Board members, (3) prohibition of ex parte communications, (4) identification of parties who can participate in such proceedings, (5) provisions to enable intervention in the proceedings, (6) detail of the order of proceedings, (7) enabling of a process to issue subpoenas, and (8) requirements for notice of hearings.

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Chapter 2

MAINE BOARD OF UNDERGROUND STORAGE TANK INSTALLERS

RULES OF PRACTICE AND PROCEDURE GOVERNING ADJUDICATORY PROCEEDINGS

Section 1. HEARINGS IN GENERAL

Board hearings shall conform to the Administrative Procedure Act, 5 M.R.S.A. Chapter 375.

Section 2. DUTIES AND RESPONSIBILITIES OF THE PRESIDING OFFICER

The Presiding Officer at all hearings may be either the Chairperson or an alternate designated by the Board. The Presiding Officer shall preside at a hearing in a manner affording consideration of fair play and compliance with the constitutional requirements of due process. The Presiding Officer shall also have authority to:

A. Hold a conference for the simplification of issues;

B. Issue subpoenas requested by the parties;

C. Place witnesses under oath;

D. Take action necessary to maintain order;

E. Rule on motions and procedural questions arising before and during the hearing;

F. Call recesses or adjourn the hearing; and

G. Prescribe and enforce general rules of conduct and decorum.

Section 3. ROLE OF BOARD MEMBERS

The Board members collectively shall be responsible for reviewing evidence and hearing testimony and argument in order to:

A. Determine whether or not the alleged conduct is supported by the evidence;

B. Determine whether or not the conduct is a violation of 32 M.R.S.A. § 10001, et seq. and/or related rules; and

C. Determine and impose appropriate disciplinary sanctions.

Section 4. EX PARTE COMMUNICATIONS

A member shall not discuss an issue of fact or law concerning a case which comes before the Board, except with notice and opportunity for participation by all parties. This rule shall not be construed to limit a discussion that does not relate to the merits of a case, such as scheduling or procedural issues. A member shall not be limited from discussing a case at meetings with the attorney for the Board.

Section 5. PARTIES

Parties in a Board hearing, with the exception of the staff or an intervenor, shall be limited to:

A. The installer against whom an allegation or complaint is made; or

B. The installer whose qualifications are in question.

Section 6. INTERVENTION

An application for intervention in a Board proceeding shall be filed, except for good cause shown, at least seven (7) days in advance of the scheduled hearing. Rulings by the Board or the Presiding Officer shall be subject to the provisions of 5 M.R.S.A. § 9054.

Section 7. ORDER OF PROCEEDINGS

The order of proceedings, unless modified by the Presiding Officer to facilitate the hearing, shall be as follows:

A. The staff and any party in support of the action may offer an opening statement;

B. The party defending against the action may offer an opening statement;

C. The staff and any party presenting evidence in support of the action may offer their case;

D. The party defending against the action may cross examine each witness;

E. The party defending against the action may offer his or her case;

F. The staff and any party in support of the action may cross examine each witness; and

G. Each party may offer a closing statement at the hearing or in writing within seven (7) business days following the hearing.

Section 8. SUBPOENAS

A party shall be entitled to the issuance of subpoenas in the name of the Board subject to the provisions of 5 M.R.S.A. § 9060. Subpoenas shall be requested, except for good cause, at least ten (10) days in advance of a scheduled hearing. Subpoenaed witnesses shall be paid the same fees for attendance and travel as in civil cases before the courts. Fees shall be paid by the party requesting the subpoenas when the request is submitted.

Section 9. NOTICE OF HEARINGS

Notice of a hearing shall be given to all parties at least fourteen (14) days prior to the date on which the hearing is to be held.

Section 10. SEVERABILITY

Should any provision of this rule be declared invalid or ineffective by a court decision, the decision shall not invalidate any other provision of this rule.

After a public hearing on March 31, 1988 and open comment periods extending from March 1 - April 11, 1988 and June 15 - July 15, 1988, this rule is adopted this _____ day of _____, 1988.

Authority: 32 M.R.S.A. Section 10004

Accepted for Filing: _____

EFFECTIVE DATE: _____

BASIS STATEMENT

Statutory authority for the adoption of these rules is provided by 32 M.R.S.A. Section 10004. They are designed to form the framework for the operation of the Maine Board of Underground Storage Tank Installers. Specific objectives are:

(1) Specify details required by statute regarding Board organization including composition of the Board, meetings, Board records, and management of funds;

(2) Provide judicially enforceable standards for minimum requirements for certification of underground oil storage tank installers and selected employees of the Department of Environmental Protection;

(3) Establish enforceable standards of practice for installers, including a code of ethics and continuing education requirements; and

(4) Detail procedures for enforcement and disciplinary action which provide for due process and proper notice under the Maine Administrative Procedure Act.

In general, the provisions of these rules are compelled by statute in either the Underground Storage Tank Installers Act, 32 M.R.S.A. Section 10001, et seq., or the Maine Administrative Procedure Act, 5 M.R.S.A. Section 8001, et seq. Exceptions to these requirements are (1) fee structures, (2) passing test scores, and (3) specifics of the Code of Ethics. Fee structures which are proposed are based on actual program costs, with an overall objective of providing for a self-supporting program thus minimizing overall costs to society and maximizing net benefits to society.

The test scores chosen as passing reflect the results of administering the tests during 1985-87. This experience shows a clear break point at the passing score proposed in these Rules. Therefore, the passing score selected appears to differentiate well between applicants who desire to obtain the necessary knowledge to properly install underground oil storage tanks and those that do not. As a result, the designated levels for passing scores ensure what appears to be the best compromise between (1) ensuring competent personnel and (2) ensuring an adequate supply of underground oil storage tank installers.

Specifics of the Code of Ethics were modeled after a long standing existing code; that of the National Code of Engineering Examiners. Upon review of a variety of existing codes, the Board felt these to be the most relevant for underground oil storage tank installers.

To assist the Board of Underground Storage Tank Installers in formulating the provisions of these rules and to encourage public participation in the rulemaking process, a public hearing was held in Augusta, Maine on the morning of March 31, 1988. Written comments were accepted through April 11, 1988. Since some of the comments received resulted in substantive changes, the revised rules were published for public comment on June 15, 1988. Comments on the amended rules were accepted until July 15, 1988.

During the initial comment period, two major comments were received from three individuals, all certified underground oil storage tank installers. In addition, the Attorney General's Office noted a number of issues needing to be addressed. Substantive comments, along with the Board's and staff's actions on those comments, are presented in the following paragraphs.

First, two commentors felt that criteria constituting cause for enforcement hearings (Section 6, subsection B of the proposed rules) were too stringent, in that three complaints or notices of violation from the Department of Environmental Protection (DEP) would automatically constitute cause for an enforcement hearing, and these violations could be accrued over an entire career of an installer. Suggestions for remedying this included (1) setting a time limit after which a violation would be "erased" from the record, or (2) erasing a violation if an installer voluntarily corrected the problem further.

In order to deal with this issue, staff made contact with the Licensing and Enforcement Division of the Maine Department of Professional and Financial Regulation. With a few legislatively mandated exceptions, staff found that most professional regulation boards in the state do not have automatic violation quotas to institute enforcement hearings, but rather weigh the severity and frequency of violations on a case-by-case basis. That agency's staff recommended that flexible approach for two reasons: (1) it allows greater precision in evaluating individual cases, and (2) it generally ensures more enforceable cases if violations must be referred to Administrative Court for action. Therefore, the proposed rules have been amended to allow the Board to make more flexible case-by-case decisions based upon the severity of violations and the frequency and history of other violations by the same installer.

Second, one commentor felt that the program would be less difficult to administer if all installers were required to recertify at the same time. Initial certification fees could be pro-rated to fairly account for shortened certification periods in some circumstances. Prior to the development of these rules, the Board considered this approach but rejected it because it would tend to result in an unbalanced cash flow. Thus, this comment was not incorporated into the rules.

Issues identified by the Attorney General's Office included: (1) a need for more flexibility in identifying cause for hearings (Chapter 1, Section 6); (2) inclusion of a provision to permit the Board to issue advisory rulings (Chapter 1, Section 7); (3) provision of more specific rules for governing adjudicatory proceedings; and (4) a number of editorial changes which may or may not have been substantive. All of these issues were addressed in the amended rules proposed June 15, 1988.

Moreover, a change in the examination procedures was incorporated into the amended rules proposed June 15, 1988. When the proposed rules were first presented at public hearing, staff proposed a change based on laws enacted in 1987 (P.L. 1987, Chapter 410). These changes were based upon the repeal of 32 M.R.S.A. Section 10009 (Ibid., Section 9). While that change appeared at that time to eliminate oral examinations as an option, further review of the 1987 law indicated that oral examination remained as an alternative to the written examination (Ibid., Section 11). Therefore, the option of an oral examination has been re-introduced into these rules. Due to the effort required to conduct such an examination, however, staff felt that in order to take such an exam, applicants should have to demonstrate to the Board that a written examination would not fairly test the applicant's knowledge.

During the second comment period, June 15 - July 15, 1988, one written comment was received from an installer objecting to one provision of the Code of Ethics (Chapter 1, Section 5A(1)(h)), specifically, the provision requiring installers having knowledge of possible violations of the Code of Ethics to provide that knowledge to the Board. This particular installer was concerned that, since he deals with a lot of other installers with installation problems, he would have to report all such queries as "possible violations," and thus threaten his business. The Board does not consider a question about a potential installation problem as a "possible violation." Moreover, since another provision of the Code of Ethics (Section 5A(3)(c)) prohibits malicious or false, direct or indirect injury to other installers' professional reputations, installers reporting "possible violations" should

have direct knowledge that the violation occurred and have reason to believe that the installer committing the act is not willingly attempting to correct it. Thus, a telephone query is not a possible violation, and thus not a matter for automatic referral to the Board. Given this interpretation, the Board feels the proposed provision as originally written does not compromise the commenter's business and therefore does not require change.

APPENDIX C

ON-SITE EXAMINATION CHECKLIST

PAPERWORK

Installer's Name: _____

Name of site where tank is to be installed: _____

Location of site where tank is to be installed: _____

_____

_____

___ Department of Environmental Protection Tank Registration Form has been filled out, and a copy is attached.

___ Local codes and regulations have been checked and any required local permits obtained.

___ Registration has been acknowledged by the Department of Environmental Protection as complete.

___ If written examination is required, date written examination was passed: _____

Department of Environmental Protection Site Registration Number: _____

Date of Construction begun: _____

Date construction completed: _____

I have read and understand tank registration materials and all state and local codes and regulations applicable to this site. I understand that it is my responsibility to ensure that this storage facility complies with all relevant regulatory requirements:

Signed: _____

ON-SITE EXAMINATION CHECKLIST — INITIALS

STEEL TANK INSTALLATION PROCEDURES

A. **Handling and Testing:** _____

__ Tank(s) tested, using appropriate equipment, at 3 to 5 psi soapy water solution applied to all seams and carefully inspected for air bubbles.

__ Double wall tanks tested according to procedure outlined in PEI Publication RP100-86.

__ Appropriate moving/lifting equipment on hand to place tank carefully into hole.

B. **Bed and Backfill Material:** _____

__ Clean, washed, well-granulated, free flowing, non-corrosive, inert material: sand, crushed rock or pea gravel. Largest particle not larger than 3/4 inch.

C. **Hole Size:** _____

__ 12 inch minimum clearance on all sides of each tank.

__ Hole Depth, taking into account bedding thickness, anchoring pad thickness (if used), tank diameter, depth of cover and slope of piping.

__ If this is a marketing and distribution facility, and bedrock is located within three feet of the bottom of the tank excavation, then the use of an impervious barrier and monitoring well is required.

D. **Anchoring:** _____

__ Anchoring required because:

___ Groundwater expected to come into contact with the bottom of the tank.
___ Hole flooding due to surface water infiltration anticipated.

__ Completed in accordance with PEI recommended practice RP100-86:

___ Reinforced concrete slab under tank.
___ Reinforced concrete deadmen.
___ Reinforced concrete slab over tank.

__ Hold downs used with anchor pad or deadmen electrically isolated from the tank.

__ Anchoring not required.

ON-SITE EXAMINATION CHECKLIST INITIALS

E. Steel Tank Installation Procedures: _____

__ Minimum 12 inch bed of graded, leveled, and compacted backfill material under tank.

__ All temporary supports removed prior to final backfilling.

__ Backfill carefully placed around all sides of tank and properly compacted.

__ Sacrificial anodes dampened with three to five gallons of water to assist in initial cathodic protection monitoring.

__ Tank is located in:

__ Traffic area.
__ Non-traffic area.

__ Depth of cover used:

__ Inches of backfill.
__ Inches of asphalt.
__ Inches of reinforced concrete.

F. Cathodic Protection Monitoring: _____

__ Electrical connection to the tank accessible at the ground surface is provided.

__ Location along centerline of the tank to place a reference electrode in contact with the soil is provided.

__ Structure to electrolyte potential measurement for each tank:

Tank #1: ____ volts Tank #2: ____ volts Tank #3: ____ volts

Tank #4: ____ volts Tank #5: ____ volts Tank #6: ____ volts

__ Date of initial cathodic monitoring indicates:

__ All tanks OK (-.85 volts or greater).
__ One or more tanks need to be rechecked within six months.

ON-SITE EXAMINATION CHECKLIST INITIALS

FIBERGLASS TANK INSTALLATION PROCEDURES

A. Handling and Testing: _____

__ Tank tested at 5 psi for 4', 6', 8', and 10' diameter tanks; 3 psi for 12' diameter tanks. Soapy water solution applied and the entire tank surface carefully inspected for air bubbles.

__ Double wall tanks tested according to procedures outlined in PEI publication RP100-86 and manufacturer's instructions.

B. Bed and Backfill Material: _____

__ Pea Gravel - Clean naturally rounded aggregate, with particle size not less than 1/8" or more than 3/4" in diameter.

__ Stone or Gravel Crushings - Washed stone or gravel crushings with angular particle size not less than 1/8" or more than 1/2" in diameter.

C. Hole Size: _____

__ Stable walls - 4', 6', 8', and 10' diameter tanks, 18" minimum between tanks, at ribs and between tanks and hole walls.

__ Stable walls - 12' diameter tanks - 24" minimum between tanks and hole walls and 24" between adjacent tanks.

__ Unstable walls - 1/2" tank diameter minimum between tanks and hole walls; 18" minimum between adjacent tank ribs.

D. Anchoring:

__ Anchoring required because:

__ Groundwater expected to come into contact with the bottom of the tank.
__ Hole flooding due to surface water infiltration anticipated.
__ Tank is 12 feet in diameter.

__ Completed in accordance with PEI recommended practice RP100-86 and manufacturer's instructions:

__ Reinforced concrete slab under tank.
__ Reinforced concrete deadmen.
__ Reinforced concrete slab over tank.

__ Anchoring not required.

ON-SITE EXAMINATION CHECKLIST INITIALS

E. Installation Procedures: _____

__ Minimum 12" level backfill bed of approved material.

__ All temporary supports removed prior to final backfilling.

__ Initial backfill - first 18" lift pushed completely under tank bottoms between ribs and under end caps to eliminate all voids.

__ Complete backfilling to tops of tanks in uniform lifts.

__ Tanks not filled until backfilled to the tops of the tanks.

__ Fill tanks completely after backfill is to the top of the tanks. If high water is expected in the hole prior to completion of the installation, fill tanks completely after backfill is to the top of the tank.

__ Tank is located in:

- __ Traffic Area
- __ Non-Traffic Area

__ Depth of cover used:

- __ Inches of backfill
- __ Inches of asphalt
- __ Inches of reinforced concrete

__ Filter fabric hole liner is required because of the following installation condition(s):

- __ Tidal condition or frequently changing water table
- __ Unstable soils (muck or landfill)
- __ Water condition with silty soil

ON-SITE EXAMINATION CHECKLIST — INITIALS

F. Tank Inspection Procedures: _____

	Tank Number 1	2	3	4	5
Underwriters Laboratories label number (to correspond with invoices and UL label on tank.)	____	____	____	____	____
Tank nominal capacity (gallons).	____	____	____	____	____
Tank Measurements in inches (see Manufacturer's instructions) to confirm that the tank has proper support.	____	____	____	____	____
1. After pressure test, measure and record tank internal diameter prior to backfilling.	____	____	____	____	____
2. After backfill is at subgrade, measure from tank bottom to top of fill tube prior to insertion of drop tube.	____	____	____	____	____
3. After backfill is at subgrade prior to insertion of drop tube, measure distance from tank top fitting to top of fill tube.	____	____	____	____	____
4. Calculated tank internal diameter with backfill at subgrade (subtract measurement #3 from measurement #2).	____	____	____	____	____
5. Calculated tank deflection (subtract measurement #4 from measurement #1).	____	____	____	____	____

ON-SITE EXAMINATION CHECKLIST INITIALS

MONITORING WELLS

A. Regulatory Requirements: _____

__ Monitoring well(s) required by regulations because this is a:

__ Marketing and distribution facility in a sensitive area.
__ Marketing and distribution facility, bedrock within three feet of the bottom of the excavation.
__ Waste oil tank.
__ Consumptive use facility, single walled tank, over 1100 gallon capacity.

__ Monitoring wells not required by regulations, installed as an option.

__ Monitoring wells not installed at this installation.

B. Type of Monitoring Well(s): _____

__ Well(s) to be:

__ Vertical wells, ground water within 15 feet of ground surface.
__ Well with impervious barrier, ground water more than 15 feet from the ground surface, or bedrock within three (3) feet of the bottom of the excavation.

C. Construction Details, All Well(s): _____

__ Monitoring well(s) constructed of minimum two inch diameter, minimum Schedule 40, flush joint, threaded PVC pipe with .010 inch factory made slots. Slotted section of the well(s) at least ten (10) feet long.

__ Cap installed at the bottom of the slotted section of the well(s).

__ Screened portion of the well(s) surrounded by clean sand, gravel, or peastone.

__ Top 18 inches of the well(s) sealed with bentonite.

__ Well(s) equipped with liquid proof cap.

__ Well(s) properly protected from vehicles.

__ Well(s) properly distinguished from fill piping.

__ Well(s) identified by a number clearly marked on the well(s) itself.

ON-SITE EXAMINATION CHECKLIST INITIALS

D. Construction Details, Wells with Impervious Barriers: _____

__ Type of barrier:

__ Impermeable material, resistant to hydrocarbons, minimum 30 mils thick.
__ Concrete pad, minimum 6 inches thick.

__ Barrier placed under tank bedding material shall not be in direct contact with the tank.

__ Barrier extends minimum of 18 inches beyond each side of the tank.

__ Top surface of barrier sloped at quarter inch per foot to 24 inch deep sump.

__ Base of well placed at bottom of sump in the barrier.

ON-SITE EXAMINATION CHECKLIST INITIALS

PIPING

A. Piping Type: _____

	Fill	Product	Vent	Fittings
__ Fiberglass	_____	_____	_____	_____
__ Cathodically Protected Steel	_____	_____	_____	_____
__ Non-corrosive material Approved by DEP	_____	_____	_____	_____
__ Copper	_____	_____	_____	_____
__ Schedule 80, fiberglass coated (fill pipe only)	_____	_____	_____	_____

B. Trenching and Backfill Requirements, All Piping: _____

__ Piping run in a single trench wherever practicable.

__ Piping runs across tanks avoided.

__ Trench size allows for:

- __ Minimum six inches of bedding material.
- __ Minimum six inches of backfill around all lines.
- __ Multiple piping runs in same trench separated by at least twice nominal pipe diameter.
- __ Minimum uniform slope of 1/8 inch per foot towards tank.
- __ Minimum burial depth of 18 inches in traffic areas.

__ Vent piping for storage of Class I liquids at least 12 feet above ground surface and positioned such that vapors shall not pose a hazardous condition.

__ Fill piping for Class 1 liquids shall be at least 5 feet from any building opening.

__ Backfill of well compacted, non-corrosive material such as clean sand, pea stone, or gravel.

ON-SITE EXAMINATION CHECKLIST INITIALS

C. Installation Requirements, Metallic Piping: _____

__ Piping is minimum Schedule 40 steel.

__ Fittings minimum 150# malleable iron.

__ Appropriate, product compatible pipe dope or sealant on hand (be sure your sealant is compatible with alcohol and ether based compounds present in today's motor fuels).

__ Proper swing joints or flexible connectors installed at beginning and end of each product and vent line.

__ Anodes properly located, connected and backfilled according to recommendations of PEI Publication RP100-86.

__ All temporary supports removed prior to final backfilling.

D. Installation Requirements, Fiberglass Piping: _____

__ Piping is UL approved for underground service with petroleum products.

__ Appropriate adhesives on hand and manufacturer's instructions for joining piping and fittings, including surface preparation, temperature and moisture considerations, and curing carefully followed.

__ Metallic fittings used in conjunction with fiberglass piping are of non-corrosive materials (stainless steel, teflon) or else cathodically protected.

__ All temporary supports removed prior to final backfilling.

E. Testing and Piping Prior to Use: _____

__ If piping is tested with air pressure:

__ Piping is physically isolated from the tank prior to the test.
__ Piping tested to a minimum of 50 psi.
__ All joints, seams, and connections soaped and carefully inspected.
__ Test pressure maintained for a minimum of one hour.

ON-SITE EXAMINATION CHECKLIST — INITIALS

__ If piping is tested with liquid pressure: _____

__ Piping is physically isolated from the tank prior to the test.
__ All air or vapor pockets bled from the line.
__ Piping tested to a minimum of 50 psi.
__ Test pressure maintained for a minimum of 15 minutes (Pressure must not drop more than 5 psi per minute).

__ If a remote pumping system is tested with liquid pressure:

__ Close a shut off valve at bottom of dispenser.
__ Start pump and record pressure (25-35 psi.)
__ Seat check and relief valves.
__ Shut off pump, monitor pressure for a minimum of 15 minutes.

F. Leak Detection Requirements: _____

__ For motor fuel dispensing facilities:

__ Remote pumps equipped with line leak detection device.
__ Line leak detector tested for proper operation before facility is placed in use.
__ Suction pump equipped with a single check valve located as close as possible to the dump.

__ This is not a motor fuel dispensing facility.

G. Overfill Protection: _____

__ Required because:

__ Marketing and distribution facility.
__ Consumptive use facility with monitoring wells.

__ Type of overfill protection installed:

__ Collection box at fill pipe, 3 gallon capacity or greater.
__ Vent float valve (not to be used where deliveries are to be made under pressure).
__ Flow shut-off device in the full line.

__ Overfill protection not required.

ON-SITE EXAMINATION CHECKLIST INITIALS

H. Galvanic Cathodic Protection Requirements for Metallic Pipe and Fittings: _____

__ Piping electrically isolated from tank and from pumps and not connected to facility's electrical ground in any way.

__ All isolating fittings checked for electrical continuity.

__ Sufficient sacrificial anodes properly attached to piping and/or fittings as per recommendations of PEI Publication RP100-86.

__ Piping properly coated and/or wrapped according to recommendations of PEI Publication RP100-86.

__ Electrical connection for monitoring of structure to soil potential available at the ground surface.

__ Location above piping runs available for placement of reference electrode in contact with the soil to monitor structure to soil potential.

I. Cathodic Protection Monitoring of Metallic Pipe and Fittings: _____

__ Structure to electrolyte potential measurement for each piping run:

Pipe #1: ____ volts Pipe #2: ____ volts Pipe #3: ____ volts

Pipe #2: ____ volts Pipe #5: ____ volts Pipe #6: ____ volts

__ Date of initial cathodic protection monitoring: _____

__ Cathodic protection monitoring indicates:

__ All piping runs OK (-.85 volts or greater).
__ One or more piping runs need to be rechecked within six (6) months.

J. Copper Piping: _____

NOTE: Copper piping is acceptable for supply and return unless lines connecting an underground tank to an oil burner using #1 or #2 fuel oils only.

__ Copper piping enclosed in minimum schedule 40 PVC sleeve at least twice the diameter of the copper piping.

__ PVC sleeving extends the entire length of the copper piping which is underground, buried or otherwise hidden from view.

__ PVC sloped uniformly so that water will not accumulate in traps or sumps in the line.

APPENDIX D

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
INSTALLATION INSPECTION

1. Inspector: _____ 2. Date of Inspection _____

3. Facility Data:

a. Registration Number: _____ b. Facility Name: _____
c. Owner: _____ d. Installer: _____
e. Facility Use: Marketing/Distribution ___ On-site/Owner Consumption ___
f. Number/Size/Type/Product Stored:
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
g. Sensitive geologic area: __Yes __No h. Shallow bedrock: __Yes __No __Uk
i. Type of leak detection required: _____
j. Construction material:

	Fiberglass	Cathodically-Protected Steel
Tanks	_____	_____
Piping	_____	_____

k. Status at inspection: ____Ongoing ____Completed

4. Evaluation of Reporting Requirments:

a. Five (5) business days advance notice provided: __Yes __No
b. Named certified installer supervising installation: __Yes __No
c. Registration accurate and complete: __Yes __No
If no, note discrepencies: _____
_____

5. General Requirements:

a. Proper excavation size:	___Yes	___No	___Uk
b. Proper backfill:	___Yes	___No	___Uk
c. Proper depth of cover	___Yes	___No	___Uk
d. Vent pipe of proper size/configuration:	___Yes	___No	___Uk
e. Product piping in single trench:	___Yes	___No	___Uk
f. Single check valve provided for suction system:	___Yes	___No	___N/A
g. Line leak detector provided for pressure system:	___Yes	___No	___N/A
h. Overfill protection provided:	___Yes	___No	___Uk
i. Pre-installation tank testing accomplished:	___Yes	___No	___Uk
j. Proper handling of tank:	___Yes	___No	___Uk
k. Anchoring provided, if needed:	___Yes	___No	___Uk
l. Tank deflection checked before and after backfiling	___Yes	___No	___Uk
m. Tanks are UL listed:	___Yes	___No	___Uk
n. Temporary supports removed prior to backfiling:	___Yes	___No	___Uk

Codes:

F.R.P - Fiberglas Reinforced Plastic	F.O. - Fuel Oil
C.P. - Cathodially Protected	R.L. - Regular Leaded
S.U.L.- Super Unleaded	U.L. - Unleaded
D. - Diesel	W.O. - Waste Oil
H.M. - Hazardous Materials	K. - Kerosene
J. - Jetfuel	A.V. - Aviation Fuel

Date:_____ Registration No:_____

6. Special requirements for cathodic protection/NA

a. Proper coating, checked and repaired where needed: ___Yes ___No Tanks
___Yes ___No Piping
b. Insulating bushings provided: ___Yes ___No
c. Access to soil provided for subsequent monitoring: ___Yes ___No
d. Voltage readings (where appropriate):

Tank Number	Tank	Piping

7. Leak detection provisions applicable: ___Yes ___No

a. Type of tank leak detection installed:_____
b. Proper location and number of monitoring wells: ___Yes ___No ___N/A
c. Monitoring wells checked weekly and analyzed once before going in use:
___Yes ___No.
d. Type of piping leak detection installed:_____
e. Proper design and function of system: ___Yes ___No
If no, note problem:_____
_____

f. Evidence of leak apparent: ___Yes ___No
If yes, state evidence:_____
_____
_____

8. Summary and Other Comments:

DM/ts

INSTINSP