



MAINE OIL DEALERS ASSOCIATION

TECHNICAL BULLETIN #6.5

MAINE UNDERGROUND TANK LAW CHANGES

September, 1992

[Replaces Technical Bulletin #6.4, issued January, 1992]

UPDATE ON MAINE'S UNDERGROUND TANK LAWS

In the spring of 1987 the Maine Legislature enacted significant changes in Maine's underground tank law. These changes became effective on September 29, 1987. An additional change was made effective September 15th, 1989, changes to the tank installers law and the FAME and MSHA removal financing laws were made in the summer of 1989, and towns were given a deadline extension in 1990. The Maine Legislature made additional changes to both the technical requirements and loan availability elements of the programs in 1991. In 1992, more changes were made, including restrictions sought by MODA to restrict excessive enforcement. The following is a brief summary of those changes.

1. Phase-out of all Bare Steel Tanks.

The law requires that all bare steel tanks be phased out over 10 years. By October 1, 1997 the use of bare steel tanks will be prohibited. There are three

interim deadlines during the 10 year period which you need to know. Depending upon the age of the tank, the prohibition against the use of bare steel tanks will apply to you according to the following schedule:

October 1, 1989- all 15 year old tanks in sensitive geological areas (note: tanks which are: (1) located in a municipality with a population of more than 10,000; (2) located in an area served by a water utility; and (3) not located near the water utility's source of supply nor a private well are not in a sensitive geological area for purposes of this prohibition)

October 1, 1991- all 25 year old bare steel tanks and 15 year old tanks located in sensitive geological areas (October 1, **1992** for towns and SADs)

October 1, 1994- all 20 year old bare steel tanks and 15 year old tanks located in sensitive geological areas

October 1, 1997- all remaining bare steel tanks

If the age of the tank is unknown, it is presumed to be 20 years old on October 1, 1989. If the Board of Environmental Protection finds that a tank owner has failed to correct any violations of the tank law, the BEP may impose the prohibition against the use of bare steel tanks on that tank owner earlier than the statute prescribes.

In 1992, at MODA's request the Legislature amended the definition of a sensitive geological area to exclude a convenience store served by its own well as long as that well is not the water supply for anyone else. This had previously been considered a public water supply because a c-store serves coffee to the general public.

2. Variance to Tank Removal Deadlines. In 1991 MODA proposed a bill, "An Act to Clarify the Laws Pertaining to Underground Oil Storage Tanks," as L.D. 1675, which was passed and signed into law. This legislation contained several important provisions:

Extension of Tank Removal Deadlines, 38 MRSA §563-A, sub-§1-C. If a tank owner cannot comply with the tank removal requirements as outlined in paragraph 1 of this memo, by either of the following:

- (i) Can not secure financing for that removal as evidenced by 3 letters from financial institutions; or
- (ii) Can not obtain the services of a certified underground oil storage tank installer or remover as evidenced by 3 letters from certified underground oil storage tank installers or removers.

Then, the mandatory removal date must be extended by 12 months.

3. Installation of Tanks Located in a Shoreland Zone area.

Effective September 15th, 1989, all shoreland zone areas are considered to be "sensitive geological areas."

4. Financing the Removal of Tanks.

Recognizing that replacement of underground tanks is costly, the Legislature created two programs for loans and loan guarantees for those *petroleum marketers* who own underground bare steel tanks. The Finance Authority of Maine (FAME) has a program for low-interest loans and guarantees to subsidize the costs involved in removing tanks. And, the Maine State Housing Authority

(MSHA) has a program of grants and no-interest loans for homeowners who are faced with tank removal costs.

A. FAME Mortgage Insurance Program. The Finance Authority of Maine's (FAME) Mortgage Loan Guarantee program essentially authorizes FAME to guarantee up to 100% of the payments for bank loans for underground oil storage replacement projects if the borrowing tank owner meets the following criteria:

- 1) the tank is leaking, removal is required by law, or the tank is identified by the DEP as posing an environmental threat;
- 2) the tank owner demonstrates financial need for the assistance;
- 3) the tank owner demonstrates a reasonable likelihood that he/she will be able to repay the loan.

B. FAME Direct Loans. FAME is also authorized to make direct loans from the new Underground Storage Facility Replacement Fund, created by Maine citizen's approval of a bond issue during the Fall 1987 elections, to tank owners who meet qualifications of the mortgage insurance program but are unable to obtain a bank loan even with a 100% FAME guarantee. This program was expanded in 1991 to include grants and provide a range of interest rates from 0% to the Boston prime rate.

FAME has received \$10,000,000 for its programs from an increase in the oil terminal transfer tax.

C. For more information on these programs, contact:

Finance Authority of Maine
Maine State Housing
83 Western Avenue
Augusta, Maine 04330
295 Water Street
(207) 623-FAME
Augusta, Maine 04338

(207) 626-HOME

5. Removal of Tanks.

Removal of tanks used for storage of Class I liquids (gasoline) must be performed under the direct, on-site supervision of a certified underground tank installer, a professional fire fighter certified by the DEP, or by a contractor who has a license that is limited to the removal of gasoline tanks. In addition the DEP is authorized to use money from the Groundwater Oil Clean-up Fund to remove any underground tank if the owner fails to do so within a reasonable period of time.

The 1991 changes also allowed the DEP to make rules requiring the venting at least 12 feet above ground level flammable gases purged from tanks and from trucks removing oil from tanks.

6. The Tank Installers Law.

In 1989 and 1992 the Legislature amended the Tank Installers Law. The legislation created a two tier licensing process. It also instituted an apprenticeship level which does not require an on-site examination in order to begin work; just passing a written exam.

The legislation eliminated the time requirement for apprenticeship, retained provisional license authority, eliminated on-site exams, and provided that a Class 3 licensee (heating oil tanks only) must install 6 tanks prior to licensing and a Class 2 licensee (heating oil, gasoline, and heavy oil tanks) must install 6 marketing and distribution or motor fuel tanks prior to licensing. The 1992 amendments did away with the Class 1 license which had been the required license for heavy oil tanks. The Board of Underground Storage Tank Installers was unable to design a Class I examination or package of study materials for it because no materials are available. The law also allows for a limited license to just remove gasoline tanks, should anyone want such a license.

The 1991 changes to the installer laws also expanded the role played by fire-fighting personnel. The DEP may certify fire fighters to supervise the removal of Class I liquid tanks if they pass an underground tank remover examination.

7. Sale of Property with Underground Tanks.

The 1987 amendments impose new requirements on the sellers of property with underground tanks. A seller must provide the purchaser with written notice of: (1) the existence of the tanks; (2) the tank's registration number; (3) the exact location of the tank; (4) whether the tank has been abandoned in place; and (5) the fact that the tank is subject to regulation by the DEP.

8. Registration Must be at the Tank Site.

A copy of the DEP registration must be kept at the location of the tank for inspection by the DEP or municipal officials.

9. Amnesty Period for Late Registration.

In order to encourage registration of tanks, the DEP is authorized to establish a 10 day period where those who have not registered "consumptive use" tanks may do so without paying any registration fee or penalty.

10. Installation Standards.

In 1991 the Maine Legislature passed, and Governor McKernan signed into law, L.D. 1826, An Act to Amend Maine's Underground Oil Storage Laws, P.L. 1991, Chpt. 494, which made several changes to the technical standards involved in UST management as a result of regulations promulgated by the U.S.

Environmental Protection Agency in the fall of 1988 [40 CFR Part 280]. Those are:

- A. All new and replacement tanks, piping and below ground ancillary equipment must be constructed of fiberglass, cathodically protected steel or other equally non-corrosive material. All new and

replacement tanks must include secondary containment and have continuous monitoring of the interstitial spaces for all piping and below ground ancillary equipment except for suction piping systems.

B. Anchoring of tanks when located in a site where the groundwater is expected to reach the bottom of the tank or in a 100 year floodplain.

C. Leak detection standards for all existing facilities with a leak detection system capable of detecting a leak within 30 days with a probability of detection of 95%. Pressurized systems must be retrofitted by December 1, 1990, and suction systems by December 1, 1991. The choices are:

i. Monthly reconciliation of daily product inventory data and an annual precision test of all tanks and piping. Pressurized piping must be retrofitted with an automated in-line leak detector;

or, one of the following:

ii. Secondary containment of all underground oil storage facility components or secondary containment for the tank and single walled containment for suction piping sloped evenly to the tank and equipped with a single check valve under the pump;

iii. Continuous monitoring for free product in monitoring wells installed in the excavation area around the tank(s), and to detect a leak or discharge

of oil from the piping not installed in accordance with subparagraph (ii), one of the following:

- a. continuous vapor monitoring;
- b. annual tightness testing;
- c. secondary containment with interstitial space monitoring; or
- d. other methods of leak detection approved by the department;

iv. Continuous vapor monitoring in the unsaturated zone of all elements of the facility, using sufficient sampling points to detect a leak or discharge of oil from any point in the facility;

v. Manual ground water sampling capable of detecting the presence of at least 1/8 inch of free product on top of the ground water table in a reasonable number of ground water monitoring wells installed in the excavated area, and to detect a leak or discharge of oil from the product piping not installed in accordance with subparagraph (ii), one of the following:

- a. continuous vapor monitoring;
- b. annual tightness testing;
- c. secondary containment with interstitial space monitoring; or

d. other methods of leak detection
approved by the department;

vi. Automatic tank gauging that can detect a 0.2
gallon per hour loss, and to detect a leak or discharge
of oil from product piping not installed in accordance
with subparagraph (ii), one of the following:

a. continuous vapor monitoring;

b. annual tightness testing;

c. secondary containment with interstitial
space monitoring; or

d. other methods of leak detection
approved by the department; or

vii. Other leak detection systems approved by the
department that can detect a 0.2 gallon per hour leak
rate or a leak of 150 gallons in 30 days with a 95%
probability of detecting a leak and a 5% chance of
false alarm.

Groundwater monitoring for the detection of leaks may only be used to meet the requirements of this leak detection requirement section where the water table is more than 20 feet from the ground surface.

D. Overfill and spill prevention. New and replacement facilities with a capacity in excess of 1,100 gallons must install overfill catchment basin and the use of automatic shut-off devices or the use of tank alarms. MODA was able to change the original installation schedule

to new or replacement installations or the federal deadline of December 22, 1998.

E. Other. The statute was clarified to state that other structures such as oil-water separators, catch basins, flood drains or other emergency containment structures are not regulated by the UST law.

11. Enforcement Activities.

In 1992 MODA initiated successful legislation to restrict excesses in enforcement zeal that were being reported. Those changes require the DEP to:

A. Allow a facility where a discharge has occurred to remain in service while corrective actions are being taken.

B. Require an orderly process of leak investigation that starts with checking the accuracy of statistical inventory analyses, checking for failures of mechanical and electronic equipment, and then checking the accuracy of a failed or inconclusive precision test before requiring that a tank be removed.

C. Exempt a surface spill of ten gallons or less at an underground tank facility from the reporting requirements so long as the spill is cleaned up within 24 hours, does not reach ground or surface water, and a log is kept.

D. Allow a facility that has been abandoned for more than 12 months to be brought back into service if it passes a precision test, is in conformity with the tank law, and if it is constructed of fiberglass or cathodically protected steel. Such an action actually occurred where a marketer had to dig up perfectly good tanks

because the DEP said as long as it was down more than 12 months, regardless of how good it was, it had to be abandoned.

E. Develop standards for the clean-up and remediation of contaminated soil and groundwater. The standards must take into account the background contamination levels so that the clean up is appropriate to the site, and a specific level for the most stringent standard is set, so that there can be certainty about how clean a site must be made. DEP must report its experience with this to the Legislature's Energy Committee by February 15, 1993. This is critically important and focuses on the costs of clean-up actions and any abuse of discretion in those clean-up requirements as imposed by the DEP. From now on, clean-up actions are based on the science of established contamination levels and the severity of the leak relative to the location of that leak - not simply, "...start digging and we'll tell you when to stop."

F. Require prompt repayment of direct costs to any owner who is required by DEP to remove or close a facility believed to be the source of contamination if that facility is found out to not be the source of the contamination. Claims for other expenses such as lost revenue can be made through the third party damage claims process.

G. Restrict the required use of professional engineers and certified geologists in performing site assessments at removal or replacement of tanks to sensitive geological areas. Farm and residential tanks of less than 1,100 gallons are exempt if their use was for the owner's consumption only. MODA has been asked to monitor the use and cost of PEs and certified geologists, and if it is too burdensome and expensive, to return to the Legislature for

relief. Marketers are asked to inform MODA anytime this occurs, and are also reminded that for site assessments at closure, you can avoid using a PE or geologist entirely if you use properly operating and permitted leak detection methods for 30 days prior to removing the tank.

12. More Information.

In 1985 the Maine Legislature passed the Oil Discharge Prevention and Pollution Control Act, the statute which guides all policy concerning the issue of underground oil storage tanks in Maine. This statute was amended in 1986, 1987, 1989, 1991, and 1992. You are advised to consult this law, or the DEP regulations promulgated subsequent to this law for more information. Every tank owner should get a copy of the DEP Regulations (Chapter 691) from the DEP. For more information on the laws governing the licensing of underground tank installers, contact the Board of Underground Tank Installers.

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