

Program Evaluation Report

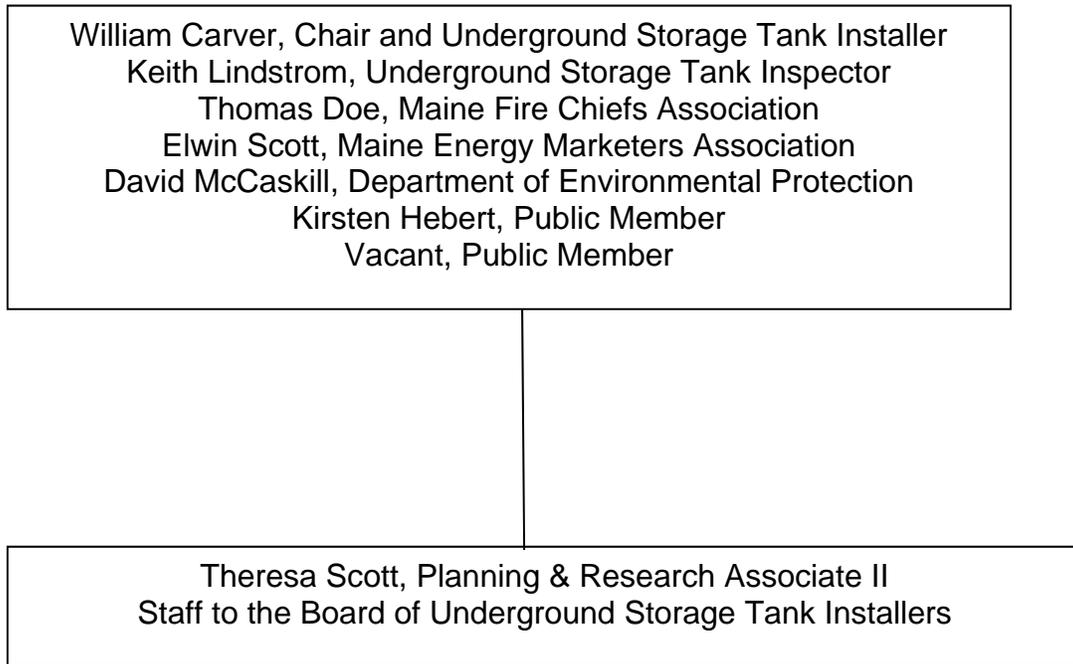
of the
Maine Board of Underground Storage Tank Installers



Prepared for the Joint Standing Committee on the
Environment and Natural Resources

November 1, 2019

Figure 1. Organization of the Board of Underground Storage Tank Installers and its Staff



Introduction

Maine law, *State Government Evaluation*, 3 M.R.S. § 959(1)(L)(5), requires the Maine Board of Underground Storage Tank Installers (BUSTI) to undergo review pursuant to the Government Evaluation Act by the Joint Standing Committee on the Environment and Natural Resources in 2019. 3 M.R.S. § 955(2) further requires the BUSTI to submit a Program Evaluation Report to the Committee by November 1, 2019.

Pursuant to 38 M.R.S. § 956(2), the Program Evaluation Report must contain the following elements:

- A. Enabling or authorizing law or other relevant mandate, including any federal mandates;
- B. A description of each program administered by the agency or independent agency, including the following for each program;
 - (1) Established priorities, including the goals and objectives in meeting each priority;
 - (2) Performance measures or other benchmarks used by the agency to measure its progress in achieving the goals and objectives; and
 - (3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance measures. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives.
- C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility;
- D. Section D of the Program Evaluation Report was repealed in 2013;
- E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years;
- F. Section F of the Program Evaluation Report was repealed in 2013;
- G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;
- H. Identification of the constituencies served by the agency or program, noting any changes or projected changes;

- I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;
- J. Identification of emerging issues for the agency or program in the coming years;
- K. Any other information specifically requested by the committee of jurisdiction;
- L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;
- M. Agency policies for collecting, managing and using personal information over the Internet and non-electronically, information on the agency's implementation of information technologies and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement;
- N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public. The list must include:
 - (1) The statutory authority for each filing requirement;
 - (2) The date each filing requirement was adopted or last amended by the agency;
 - (3) The frequency that filing is required;
 - (4) The number of filings received annually for the last 2 years and the number anticipated to be received annually for the next 2 years; and
 - (5) A description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication;
- O. A list of reports required by the Legislature to be prepared or submitted by the agency or independent agency;
- P. A copy of the single-page list of organizational units and programs within each organizational unit required pursuant to section 955, subsection 1, placed at the front of the report; and
- Q. Identification of provisions contained in the agency's or independent agency's enabling or authorizing statutes that may require legislative review to determine the necessity of amendment to align the statutes with federal law, other state law or decisions of the United States Supreme Court or the Supreme Judicial Court.

The following report presents the required information and follows the format of information outlined in elements A through Q of 38 M.R.S. § 956(2).

A. Enabling or authorizing law or other relevant mandate, including any federal mandates.

Enabling Law

In 1983, the Maine Legislature charged the Department of Environmental Protection (DEP) with developing a plan for regulating underground oil storage tanks (P.L. 1983, Chapter 785). At that time, Maine experienced increasing numbers of significant discharges from underground oil storage tank facilities that contaminated several properties including town centers and resulted in clean-up costs between \$500,000 and \$1,500,000 each. The frequency of less significant discharges and releases also exhibited a marked increase at that time.

A study titled “Comprehensive Regulatory Plan for Underground Oil Storage” found improper installation due to poorly trained installers to be a major source of installation failure.¹ At least one national study corroborated this finding.² DEP further concluded that addressing this issue through State inspection of all underground storage tank (UST) installation and repair would be prohibitively expensive³ and that no other professional regulation authority in Maine had the technical expertise to assume the role of training and regulating UST installers.⁴ After assessing a number of alternatives for establishing a regulatory authority, DEP recommended a peer review Board be established.⁵

The Maine Legislature enacted the enabling statutes for the BUSTI in 1985 as *Underground Oil Storage Tank Installers*, 32 M.R.S. §§ 10001-10016. See Appendix A of this document for the referenced statutes. It accompanied legislation specifying the authority and requirements for the DEP for regulating the installation, operation, and removal of underground oil storage tanks.

As a result of safety concerns highlighted by a fatal incident caused by the explosion of underground gasoline tanks being removed, the Maine Legislature required certification by BUSTI of persons removing such tanks in 1987. Thereafter, amendments occurred to BUSTI’s enabling law in 1987, 1989, 1990, 1992, 1997, 1999, 2000, 2001, 2003, 2005, and 2007 predominantly to add or delete certification categories and revise field experience requirements for Certified Underground Tank Installer (CTI) applicants, but also to address the BUSTI’s enforcement authority and modify BUSTI composition. Amendments in 2001 added a category of Certified Underground Storage Tank Inspectors (CTIs) in order to respond to national and state audits that showed widespread non-compliance with ongoing operation and maintenance requirements of underground storage tank facilities.

¹ Hyland, M., J. Hynson, M. Moreau, and G. Seel. Comprehensive Regulatory Plan for Underground Oil Storage. Maine Department of Environmental Protection, Pp. 47-58.

² Woods, Jr., Paul H., and Dale E. Webster. “Underground Storage Tanks: Problems, Technology, and Trends.” Pollution Engineering, July 1984. Pp. 30-40.

³ Hyland *et al.* p. 57.

⁴ *Ibid.*, Appendix H.

⁵ *Ibid.*

An additional amendment in the 2003 Maine Legislature addressed Board composition, while one in the 2005 Maine Legislature changed the appeal venue for BUSTI decisions from District Court to Superior Court. Amendments in 2007 consolidated language, repealed the various classes of installers and replaced them with a single installer certification, gave the BUSTI more flexibility to establish apprenticeship requirements than what had been previously prescribed by statute, and repealed the underground gasoline tank remover certification.

Federal Mandates

Federal Law (Resource Conservation and Recovery Act (RCRA) Subtitle I, § 9004) provides for approval of State regulatory programs for UST's and delegation of Federal regulatory authority. In order to obtain such approval, the U.S. Environmental Protection Agency (EPA) must determine the State's program has adequate authority and staffing and the requirements are no less stringent than the Federal regulation.

Federal regulation (40 CFR Part 280.20(e)) requires the use of one of several options for ensuring qualification of UST installations. Implementation of the installer certification program administered by BUSTI served as supporting documentation for Maine's application for program approval from the Federal Government.

The EPA approved Maine's program and delegated Federal authority (40 CFR Part 282.69) based in part upon the CTI program.

In 2005, Federal law amending RCRA Subtitle I was enacted to require periodic inspections of underground storage tanks (42 USC § 6991d(c)). Subsequently, the EPA developed guidelines for inspections that would qualify States for continued program authority and underground storage tank program implementation grants.⁶ Those guidelines provided for qualified third parties contracted by tank owners and operators to conduct inspections, provided the state maintained acceptable training, regulation, and audit capabilities. The BUSTI's program met the Federal criteria.

In 2015, Federal Regulation (40 CFR Part 280.35(a)(1)(ii)) required that spill prevention equipment and containment sumps used for interstitial monitoring of piping be tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing. In order to meet this requirement, the DEP enacted rules that test results for sump testing be certified by a CTI. The term CTI currently includes both an installer and an inspector.

In 2015, Federal Regulation (40 CFR Part 280.11) amended the definition of underground storage tank to include certain types of underground wastewater treatment tanks that are not subject to permits under the Clean Water Act and may contain oil. Therefore, *Rules for Underground Storage Facilities*, 06-096 Chapter 691

⁶ U.S. Environmental Protection Agency. 2007. Grant Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005. EPA 510-R-07-004. Office of Underground Storage Tanks, Washington, D.C. 8 Pp.

(last amended September 26, 2018) now requires certain new and replacement wastewater treatment tanks to be installed by a CTI.

BUSTI Rules

BUSTI is governed by rules, 06-481 Chapters 1, 2, 3, and 6. Chapters 4 and 5, which addressed Underground Gasoline Storage Tank Removers and Underground Hazardous Substance Tank Installers, have been eliminated and all tasks associated with those certifications are handled by the current CTI designation of Underground Storage Tank Installer.

Since the previous program evaluation report in 2011, changes to these rules include:

Chapter 1: Administrative Rules (last amended February 21, 2016)

Name Change: The Maine Coastal and Inland Surface Oil Clean-up Fund and Ground Water Oil Clean-up Fund were combined to create the Maine Ground and Surface Waters Clean-up and Response Fund.

Chapter 3: Certification of Underground Storage Tank Installers (last amended February 15, 2015)

Clarification of apprentice requirements: The BUSTI clarified the apprenticeship variance requirements to make them more consistent with the apprenticeship training and experience requirements.

State Reciprocity for Installers: The BUSTI amended the standards an installer certified in another state must meet when applying for reciprocity to install and remove tanks in Maine. The Board also removed the need to attend and perform a minimum number of tank removals but still required the applicant meet a comprehensive set of standards to ensure they are qualified to satisfactorily perform the duties of a Maine certified tank installer.

Chapter 6: Certification of Underground Storage Tank Inspectors (last amended February 15, 2015)

State Reciprocity for Inspectors: The BUSTI modified the language to reflect that reciprocity is open to residents of states other than Maine.

B. A description of each program administered by the agency or independent agency, including the following for each program.

BUSTI's programs include certifying and regulating individuals to install, remove, and inspect underground oil storage tanks. Certification involves a combination of developing and administering written examinations, and in the case of CTIs, ensuring an appropriate level of field experience. Recertification on a biennial basis involves

ensuring CTIs maintain a level of continuing competency as demonstrated through attendance at continuing education courses, including BUSTI-approved on-line training via the internet. Regulations include the existence of standards of practice for CTIs and provisions for due process and adjudication of complaints against CTIs before BUSTI.

(1) Established priorities, including the goals and objectives in meeting each priority.

BUSTI's enabling statute (32 M.R.S § 10001) provides a framework for the agency's goals, which include:

- Safeguarding the public health, safety, and welfare;
- Protecting the public [including underground storage facility owners and the public at large] from incompetent and unauthorized persons;
- Ensuring the highest degree of professional conduct on the part of certified installers and inspectors; and
- Ensuring the availability of underground oil storage tank installations and inspections of high quality to persons in need of those services.

Specific aspects of public health, safety, and welfare form the basis of providing these programs. The primary public health issue is the threat posed by improperly installed underground oil storage facilities leaking and resulting in contamination of existing and/or potential drinking water supplies, surface water and indoor air. A primary public safety issue involves the threat of explosion or fire resulting from the presence of flammable liquids or from construction operations that involve the installation or removal of underground oil storage tanks. Additional public health threats from petroleum releases include exposure to toxic petroleum constituents in indoor air, and petroleum contaminated drinking water.

Administratively, BUSTI has identified a variety of objectives, including:

- Certification instruments that provide demonstration of competency;
- Examination schedule to meet the needs of applicants;
- Continuing education availability to meet recertification needs;
- Continuing education that builds expertise and keeps CTIs current with technological and regulatory changes;
- Rules that ensure due process and are protective of public health, safety, welfare, and the environment; and
- Decisions that are reasonable and consistent.

(2) Performance measures, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives.

BUSTI uses the following measures:

- Frequency of oil discharges to the environment caused by improper underground tank installation;
- Oil clean-up costs avoided by proper installation of underground oil storage facilities;
- Numbers and results of annual inspections accomplished by CTIs;
- Numbers of violations by CTIs;
- Numbers of CTIs; and
- Availability of continuing education offerings.

(3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance measures. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives.

Frequency of oil discharges to the environment caused by improper underground tank installation. Over the years, BUSTI's certification, enforcement, and continuing education programs have dramatically improved the quality and safety of underground storage tank installations. Prior to the formation of BUSTI and the associated regulatory program of the DEP, Federal and State studies cited improper installation as one of the major causes of oil discharges from underground oil storage facilities.

In the Federal fiscal years 2011 through 2018, 459 spills were reported via EPA's LUST Site Release Reports (titled "Public Record - Summary Information" on DEP's web site). This information includes the likely cause of each spill. Since there can be more than one factor contributing to a spill, causes can outnumber spills. Of the 475 causes of 459 spills in Federal fiscal years 2011 through 2018, only seven were likely due to improper installation. See Figure 2, Causes of Leaks at Motor Fuel Underground Storage Facilities: Federal Fiscal Years 2011 through 2018.

Oil Clean-up Costs Avoided by Proper Installation and Inspection of Underground Oil Storage Facilities. DEP compiled clean-up costs for UST discharges that occurred at registered facilities and determined the average clean-up cost to the Ground and Surface Waters Clean-Up and Response Fund for the spills that occurred in calendar years 2011 through 2018 was \$22,000. As shown in Section E, the average contribution of the Ground and Surface Waters Clean-Up and Response Fund to the BUSTI program for the state fiscal years 2014 through 2019 was approximately \$73,400. Therefore, avoiding just over three and one third (3.33) UST discharge cleanups through proper installation and professional inspection pays for the Ground and Surface Waters Clean-Up and Response Fund contribution to the program.

Numbers and results of installations and annual inspections. Since the DEP's last Program Evaluation Report in 2011, approximately 951 underground storage tanks

have been installed (calendar years 2011 through 2018). In addition, significant work has been accomplished retrofitting new piping, overflow and spill protection equipment, leak detection equipment, and other ancillary equipment. In State fiscal year 2019, 1,735 out of 2,157 underground storage facilities and aboveground storage facilities with underground piping were inspected by CTIs. The remaining tank facilities failed to schedule an inspection or report to the DEP that an inspection was completed.

Number of individuals certified. The trend in the numbers of individuals certified is portrayed in Figure 3, Number of Certified Underground Storage Tank Installers and Inspectors (CTIs).

Examination Data. Table 1, Results of Examinations Offered by the Maine Board of Underground Storage Tank Installers, FY 2010 – 2019, provides a summary of BUSTI's examination efforts for the State fiscal years 2010 through 2019.

Table 1. Results of Examinations Offered by the Maine Board of Underground Storage Tank Installers, FY 2010 - 2019

Fiscal Year	Times Offered	Initial Certified Underground Oil Storage Tank Installer		Final Certified Underground Oil Storage Tank Installer		Certified Underground Oil Storage Tank Inspector		Total
		Pass	Fail	Pass	Fail	Pass	Fail	
2010	2	3	5	4	3	5	7	27
2011	2	3	2	0	0	5	10	20
2012	3	3	6	1	1	3	5	19
2013	2	3	3	3	1	3	3	16
2014	4	3	2	5	9	1	0	20
2015	2	6	5	1	3	4	4	23
2016	2	3	6	2	1	3	6	21
2017	2	4	2	2	4	8	7	27
2018	4	2	2	7	2	5	4	22
2019	3	0	5	1	1	4	5	16

Numbers of Violations by CTIs. Figure 4, Violations by Certified Tank Installers and Inspectors (CTIs), shows the history of violations by underground oil storage tank installers, underground storage tank removers (a certificate no longer offered), and underground oil storage tank inspectors that BUSTI has encountered.

BUSTI Continuing Education. Figure 5, New or Updated Courses Accredited by BUSTI for Continuing Education, charts the number of continuing education courses accredited by BUSTI. Maine remains unique in its attention to providing ongoing access to training in equipment and techniques used for installing and maintaining underground oil storage tank facilities. BUSTI routinely offers CTIs

access and incentive to programs to increase professional knowledge among the regulated community. The bars on the graph indicate the number of new courses accredited for a given year. Once accredited, the course remains accredited until updated by the provider. For example, a course may be updated when manufacturer's installation instructions are modified, or equipment changes are made.

BUSTI's enabling legislation includes a continuing competency requirement for recertification. In its rules, BUSTI completed this through the establishment of a continuing education program. These rules require eight continuing education credits for biennial certificate renewal. Traditionally, BUSTI offers one day long training program for CTIs, and grants four hours of continuing education credits for attendance. BUSTI accredits a variety of safety refreshers for two hours each that are mandated by the U.S. Occupational Safety and Health Administration (OSHA) for persons to work at sites regulated under RCRA, including gasoline marketing facilities with underground storage tanks. BUSTI also considers credit for petroleum equipment manufacturer or vendor sponsored training and will consider relevant requests from CTIs as well when the manufacturer has not applied for credit. Several training courses are available on-line via the internet. All such courses must be approved by BUSTI in order to be eligible for continuing education credits.

C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility.

One Planning and Research Associate II provides staff support to BUSTI which consists of six volunteer members and one appointed representative of the DEP. BUSTI's staff support is integrated into the staff hierarchy of the DEP as portrayed in Figure 6, Organization of Staff to the Board of Underground Storage Tank Installers in Relation to the Department of Environmental Protection, and answers to BUSTI as portrayed in the organizational chart provided as Figure 1, Organization of the Board of Underground Storage Tank Installers and its Staff.

D. Section D of the Program Evaluation Report was repealed in 2013.

E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years.

Table 2, Summary of BUSTI Expenses and Income, provides a summary of BUSTI expenses and income for the State fiscal years 2010 through 2019.

Table 2, Summary of BUSTI Expenses and Income

Fiscal Year	Expenses				Income		
	Personal Services	Fringe	Other ^[1]	Total	Program Income	Ground and Surface Water Fund ^[2]	Total
2010	\$91,468	\$54,454	\$19,565	\$165,486	\$20,140	\$145,347	\$165,486
2011	\$93,240	\$47,738	\$14,551	\$155,530	\$15,855	\$139,675	\$155,530
2012	\$72,917	\$45,910	\$26,068	\$144,894	\$15,900	\$128,994	\$144,894
2013 ^[3]	\$37,773	\$21,909	\$14,521	\$74,204	\$13,600	\$60,604	\$74,204
2014	\$36,008	\$23,081	\$7,326	\$66,415	\$16,820	\$49,595	\$66,415
2015	\$35,862	\$23,923	\$8,164	\$67,949	\$17,870	\$50,079	\$67,949
2016	\$37,136	\$25,652	\$8,924	\$71,711	\$18,513	\$53,198	\$71,711
2017	\$37,742	\$26,704	\$9,059	\$73,505	\$24,760	\$48,745	\$73,505
2018	\$41,456	\$28,734	\$7,659	\$77,849	\$36,175	\$41,674	\$77,849
2019	\$42,754	\$29,971	\$10,173	\$82,899	\$19,350	\$63,549	\$82,899

^[1] Includes Longevity/Overtime.

^[2] Funds were combined in Fiscal Year 2015.

^[3] The Environmental Specialist retired at the start of Fiscal Year 2013. The position was subsequently eliminated.

F. Section F of the Program Evaluation Report was repealed in 2013.

G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements.

BUSTI rulemaking and administration are provided by the DEP pursuant to 32 M.R.S. § 10003(1). The Divisions of Response Services, Technical Services and Petroleum Management staff of the DEP's Bureau of Remediation and Waste Management provide field assistance, provide regulatory interpretations of rules under their jurisdiction, investigate and present matters of alleged non-compliance to BUSTI, and provide field oversight of Maine CTIs. Field staff of DEP's Bureau of Air Quality and Underground Storage Tank program staff of the EPA coordinate in a similar manner.

The DEP Bureaus of Remediation and Waste Management, Air Quality, Land Resources, and Water Quality use continuing education opportunities provided by BUSTI to advise the regulated community of relevant rules and programs. The EPA participates in BUSTI's continuing education training workshops. BUSTI also assesses, on request, continuing education opportunities provided by other States and grants continuing education credits for programs provided elsewhere that Maine CTIs attend.

H. Identification of the constituencies served by the agency or program, noting any changes or projected changes.

Regulated community

The community regulated by the BUSTI includes applicants as well as CTIs. Interest in certification and the number of CTIs was high when the program began. Maine also embarked on the task of removing all bare steel underground oil storage facilities and replacing them with better designed and constructed facilities that were less likely to contaminate ground water from leaks and releases. After inception in 1986, the CTI population grew to 268 in 1991 and experienced a decline as the task of removal and replacement of bare steel facilities was completed.

While this decline continues as the current population of CTIs ages and retires, demand for the services of CTIs is expected to increase long term as the population of underground storage facilities ages and requires repair or replacement. Legislated mandates that have increased the time and effort needed for each annual inspection and requests to extend the use of underground oil storage tanks for an additional ten years of service will foster increased repair, testing, inspections, and retrofit work and stimulate demand for additional CTIs.

The requirement for annual inspections also prompted the formulation of the underground storage tank inspector certification program. Interest in this certificate expanded until the demand for annual underground storage tank inspections was met and then stabilized. See Figure 3, Number of Certified Underground Storage Tank Installers and Inspectors (CTIs).

Users of Services of the Regulated Community

Users of the services of CTIs constitute a constituency of BUSTI. Most notable are the owners and operators of underground oil storage facilities who rely on CTIs to keep their facilities in operation and in compliance with State and Federal underground tank rules. One surrogate indicator of the size of this population is the number of active underground tanks.

Since the inception of the underground storage tank installer certification program and the DEP UST regulatory program, the number of tanks has significantly declined as owners and operators decided whether or not sites were economically viable enough to bring them into compliance with state and federal regulatory provisions designed to reduce underground oil discharges. Prior to acquiring authority for the regulation of underground tanks, the DEP estimated the number of UST's at about 40,000.

Figure 7, Underground Oil Storage Tanks Installed Over Time, depicts the installation date for Maine's underground storage tank population in Years 1986 through 2018. The figure shows that 17,128 UST's have been installed over this time period. Currently, there are 3,188 active and temporarily out-of-service UST's at 2,017 facilities registered with the DEP. The data show a strong correlation with the State's

mandated removal and replacement schedule which began soon after DEP was provided with regulatory authority. While interest in new installations appreciably declined since 1998 when DEP emphasized actions to remove bare steel and asphalt coated steel tanks, all the tanks installed in the meantime continue to age. A continuing decline in interest for new installations can be expected, but the need for maintenance services by CTIs will continue, and demand for new installations will again increase as the current population of tanks reaches the end of its useful life.

Additional users of the underground storage tank installer certification program are the real estate professionals who rely on CTIs to ensure the marketability of underground oil storage facilities, and municipal and county planners who rely on CTIs as safeguards when permitting underground oil storage facilities at the local level.

Public at Large

Lastly but most importantly, BUSTI serves the public at large by enhancing their trust that the underground storage facilities they live and work near provide sufficient safeguards against environmental degradation and compromises to public safety.

I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives.

The program privatizes the function of oversight of UST installation, repair, inspection, and maintenance. Since the inception of the UST regulations in Maine, DEP realized the private sector was better able to provide supervision for installation, repair, and removal activities intended to protect the public from failed UST sites than the public sector. Thus, the DEP chose a program to ensure that technical knowledge and ethical behavior characterized those offering UST installation and inspection services in the private sector rather than having the DEP gather the needed resources to accomplish the tasks of supervising installations and conducting inspections. A number of other states elected to have all such oversight accomplished directly by the state.

By offering continuing education through an accreditation program rather than simply conducting all of it under Board sponsorship, BUSTI is using the private sector to deliver needed expertise to the regulated community.

J. Identification of emerging issues for the agency or program in the coming years.

The issue of maintaining and developing an adequate supply of trained individuals to meet demand for installation, repair, testing, and inspection services in the future will remain a concern. In the short term, a question exists as to whether enough CTIs exist to service the requirements for conducting inspections, repairing deficiencies discovered during those inspections, and conducting other routine testing and maintenance. The DEP is monitoring the compliance rate with the inspection requirements among UST owners and operators.

In the longer term, Maine needs to develop a new generation of CTIs to conduct the replacement of facilities now active. Natural attrition among our existing population of CTIs raises the issue of maintaining the technological expertise to install, inspect, repair, test, and maintain a diverse array of equipment present in the field. The overwhelming percentage of tanks in Maine was replaced after DEP acquired authority for UST regulation in 1985. Since the first deadlines for removal or replacement for motor fuel and marketing and distribution facilities was October 1997, (school districts and municipalities had a deadline of 1998) most facilities were replaced before that date. In the meantime, demand for new installation services is expected to remain comparatively low and is unlikely to attract new participants in the field, raising the possibility that when installation services are required they may not be readily available.

K. Any other information specifically requested by the committee of jurisdiction.

BUSTI was not requested to provide additional specific information.

L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program.

Section A of this report provides a discussion of related Federal laws and regulations and their effect on Maine's program.

M. Agency policies for collecting, managing and using personal information over the Internet and nonelectronically, information on the agency's implementation of information technologies and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement.

Personal information collected from applicants and CTIs includes names, contact information, social security numbers, relevant education and experience to UST installation and inspection, and statements of professional and personal references. Personal information generated includes exam scores and violation and enforcement history. The information is collected using paper forms. Applications are available on the internet. An applicant can print the application, complete it, and send it to the DEP.

The application form provides notice to the applicant that all information requested on the form except the social security number is public pursuant to *Maine's Freedom of Access Law*, 1 M.R.S. §§ 401-452. Social Security numbers are provided to the State Tax Assessor pursuant to 36 M.R.S. § 175. Completed application forms and files are kept under the supervision of BUSTI and DEP staff.

Names and business contact information for CTIs are provided on the DEP and BUSTI web pages for the purposes of advising potential customers of the availability of CTI services. This information is also provided to sponsors of continuing education

offerings accredited by BUSTI so that they may provide notice of educational offerings. The names and contact information are also used in the event DEP staff issue an informational mailing.

BUSTI excludes examination scores and information generated during ongoing enforcement action from public access. Examination scores are provided to the test applicant.

Final agency actions regarding investigations and enforcement are public information. Any order or consent agreement generated by BUSTI contains notice to the subject that the order or consent agreement will be placed in the subject's file and is subject to Maine's FOIA laws. Related data kept by DEP include the names of CTIs responsible for performing specific removals, installations, repairs, testing and inspections on individual facilities.

The above practices protect the privacy of the CTIs and adhere to generally accepted fair information practices.

N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public.

Form	Statutory Authority	Date Adopted or Amended	Frequency of Filing
BUSTI Forms			
Application for Certification for Underground Storage Tank Installer or Inspector	32 M.R.S. § 10010	January 2017	One time
Underground Storage Tank Apprentice Installation	32 M.R.S. § 10010(3-A)	May 2016	As necessary to document field experience required for final certification.
Apprentice Removal	32 M.R.S. § 10010(3-A)	March 2016	One time.
Variance Application	32 M.R.S. § 10010(3-A)	May 1993	One time.
Continuing Education Credit Request	32 M.R.S. § 10014(3)	February 2016	As credit is requested.
Recertification Application	32 M.R.S. § 10014(1)	December 2016	Every 2 years.
Continuing Education Certificates	32 M.R.S. § 10014(3)	Provided by education's sponsor	As credit is obtained.
Responses to Complaint Notices	32 M.R.S. § 10015(1)	By unique letter	As complaints are referred.
DEP Forms			
Certificate of Proper Installation	38 M.R.S. § 563(8)	March 2019	Upon every installation, upgrade, or repair.
Inspection Form	38 M.R.S. § 563(9)	March 2018	Upon every annual inspection.
Sump Test Form	38 M.R.S. § 564	May 2019	Every 3 years.
10 Year Extension	38 M.R.S. § 564	2011	One time.

Form	Statutory Authority	Date Adopted or Amended	Frequency of Filing
Registration Form	38 M.R.S. § 563	2011	At least 10 days prior to installation.
UST Removal Form	38 M.R.S. § 566-A	August 2018	At least 10 days prior to removal work.

O. A list of reports required by the Legislature to be prepared or submitted by the agency or independent agency.

This Program Evaluation Report is the only report required by the Maine Legislature of BUSTI.

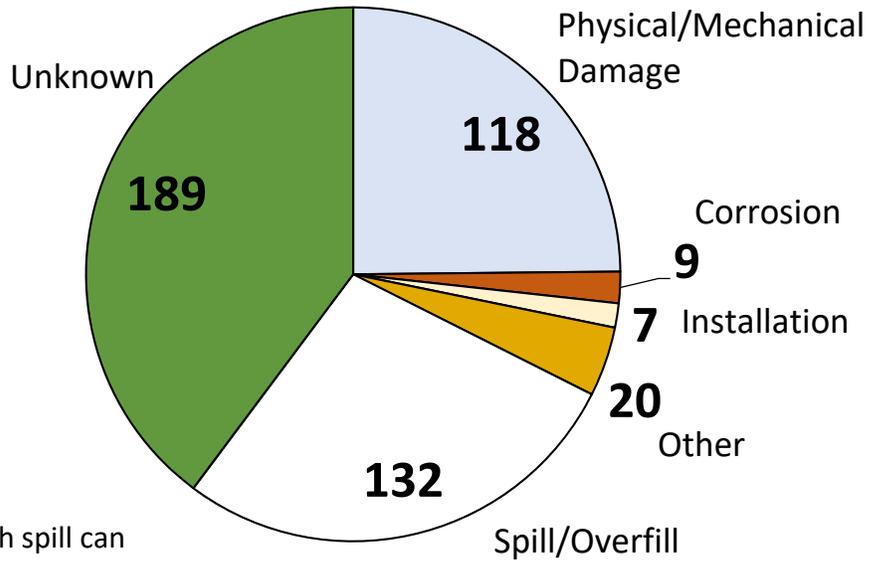
P. A copy of the single-page list of organizational units and programs within each organizational unit required pursuant to section 955, subsection 1, placed at the front of the report.

The requested single page list appears at the beginning of this report as Figure 1, Organization of the Board of Underground Storage Tank Installers and its Staff.

Q. Identification of provisions contained in the agency's or independent agency's enabling or authorizing statutes that may require legislative review to determine the necessity of amendment to align the statutes with federal law, other state law or decisions of the United States Supreme Court or the Supreme Judicial Court.

After review, the DEP believes there are no provisions in the enabling statutes that require legislative review. The DEP is unaware of any conflict with federal or state law, or any decisions of the United States Supreme Court or Supreme Judicial Court.

Figure 2. Causes of Leaks* at Motor Fuel Underground Storage Facilities: Federal Fiscal Years 2011 through 2018



*Note that each spill can have more than one cause.

Figure 3. Number of Certified Underground Storage Tank Installers and Inspectors (CTIs)

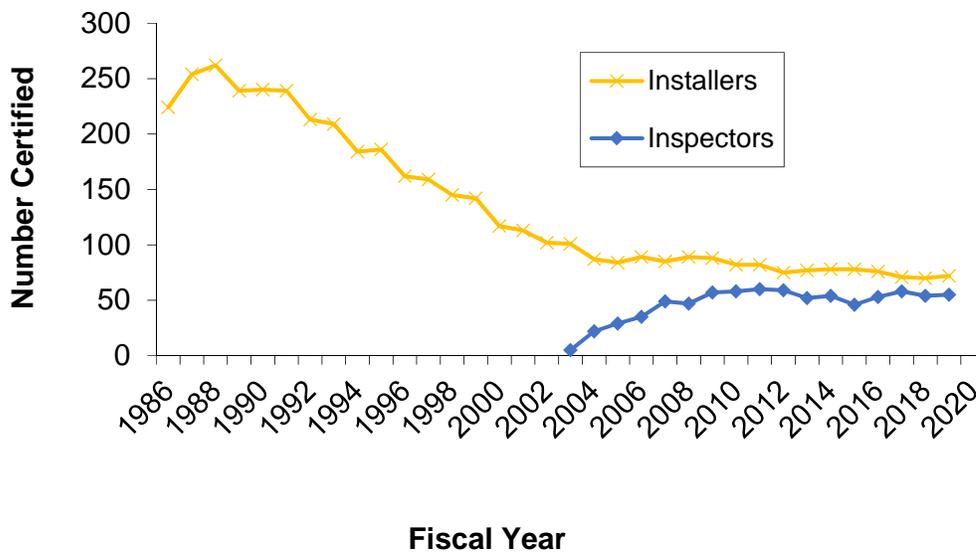


Figure 4. Violations by Certified Tank Installers and Inspectors (CTIs)

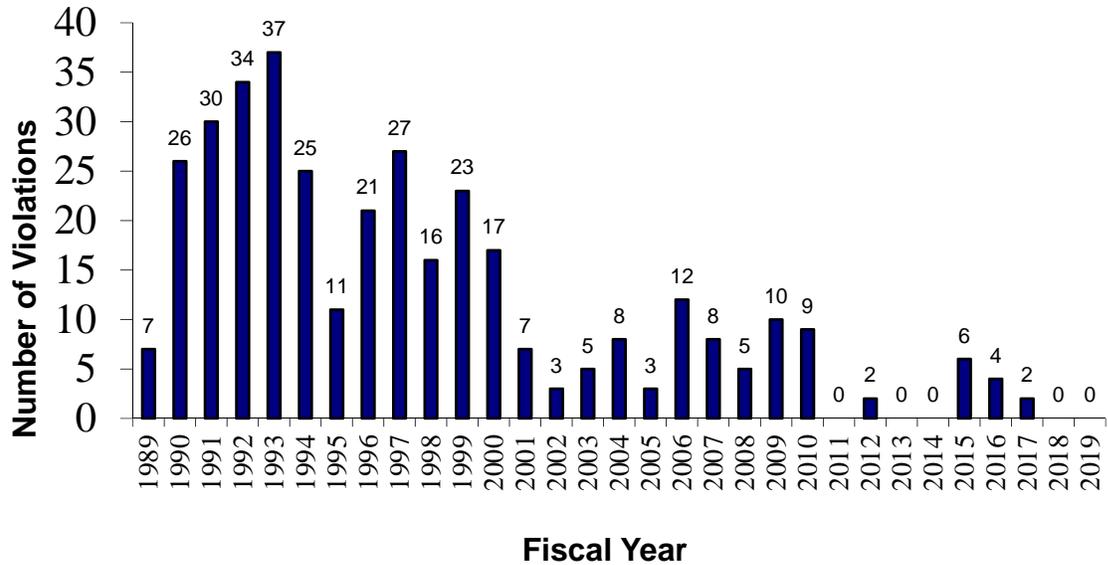


Figure 5. New or Updated Courses Accredited by BUSTI for Continuing Education

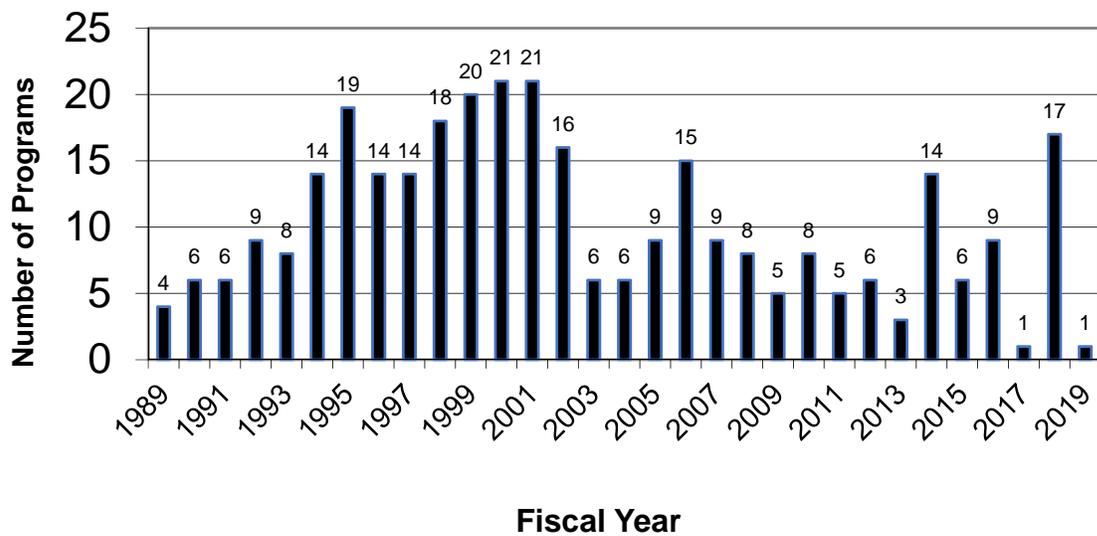
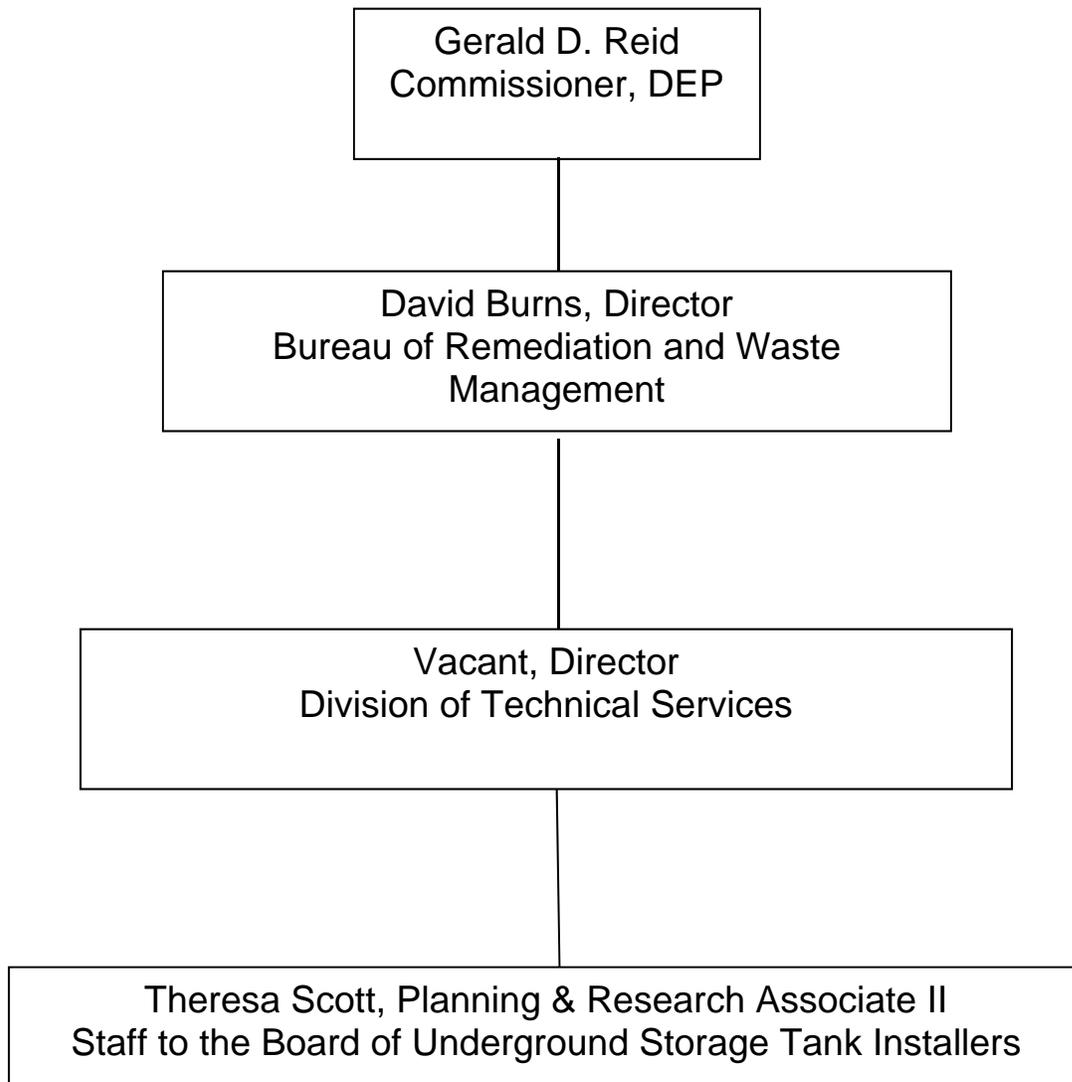
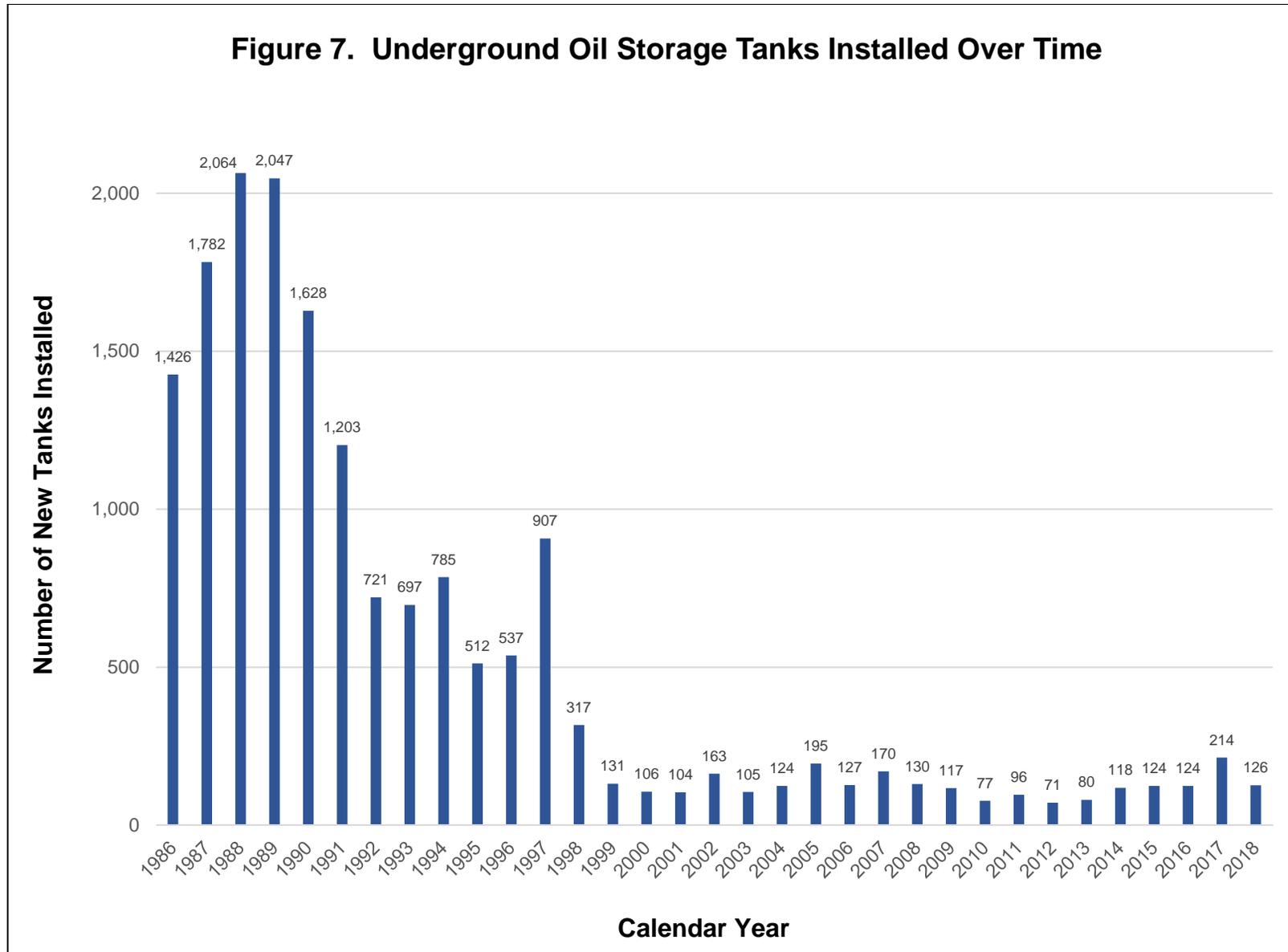


Figure 6. Organization of Staff to the Board of Underground Storage Tank Installers in Relation to the Department of Environmental Protection





APPENDIX A

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 104-A: UNDERGROUND OIL STORAGE TANK INSTALLERS

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Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 104-A: UNDERGROUND OIL 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 ensure the highest degree of professional conduct on the part of underground oil storage tank installers and inspectors and to ensure the availability of underground oil storage tank installations and inspections 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 and inspection services. [2001, c. 231, §4 (AMD).]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §2 (AMD). 1997, c. 364, §2 (AMD). 2001, c. 231, §4 (AMD).

§10002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 496, Pt. A, §2 (NEW).]

1. Board. "Board" means the Board of Underground Oil Storage Tank Installers established under this chapter.
[1985, c. 496, Pt. A, §2 (NEW) .]

1-A. Class I liquid. "Class I liquid" means any liquid having a flash point below 100° Fahrenheit.
[1989, c. 845, §4 (NEW) .]

2. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.
[1985, c. 496, Pt. A, §2 (NEW) .]

3. Department. "Department" means the Department of Environmental Protection.
[1985, c. 496, Pt. A, §2 (NEW) .]

3-A. Hazardous substance.
[1997, c. 364, §3 (RP) .]

3-B. Gasoline. "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.
[1989, c. 312, §1 (NEW) .]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

5-A. Underground hazardous substance storage tank.

[1997, c. 364, §3 (RP) .]

5-B. Underground hazardous substance storage tank installer.

[1997, c. 364, §3 (RP) .]

5-C. Underground gasoline storage tank. "Underground gasoline storage tank" means a tank or container, 10% or more of which is underground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of gasoline. The term does not include tanks or containers that are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

[1989, c. 312, §1 (NEW) .]

5-D. Underground gasoline storage tank remover. "Underground gasoline storage tank remover" means a person certified under this chapter to remove underground gasoline storage tanks.

[1989, c. 312, §1 (NEW) .]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

6-A. Underground oil storage tank inspector. "Underground oil storage tank inspector" means a person certified under this chapter to inspect underground oil storage tanks.

[2001, c. 231, §5 (NEW) .]

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.

[1987, c. 491, §2 (AMD) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §3 (AMD). 1987, c. 491, §2 (AMD).
1989, c. 312, §1 (AMD). 1989, c. 845, §4 (AMD). 1997, c. 364, §3 (AMD).
2001, c. 231, §5 (AMD).

§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 consists of 7 members appointed by the Governor as follows: one from the Department of Environmental Protection; one from the Maine Oil Dealer's Association; one underground oil storage tank installer; one from the Maine Chamber and Business Alliance or an underground oil storage tank inspector or a 2nd underground oil storage tank installer; one from the Maine Fire Chiefs Association; and 2 public members.

[2003, c. 551, §3 (AMD) .]

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 are for 3-year terms, but no person except the representative from the Department of Environmental Protection may be appointed to serve more than 2 consecutive terms at any one time. Terms 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 that exceeds 1/2 of the 3-year term is deemed a full term.

[1991, c. 499, §7 (AMD) .]

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.

[1987, c. 410, §4 (AMD) .]

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.

[1987, c. 410, §4 (AMD) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §4 (AMD). 1989, c. 845, §5 (AMD).
1991, c. 499, §7 (AMD). 1997, c. 364, §4 (AMD). 2001, c. 231, §6 (AMD).
2001, c. 626, §9 (AMD). 2003, c. 551, §3 (AMD).

§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.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Rules. The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, 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 storage tank installation, inspection and removal and underground gasoline storage tank removal.

[2001, c. 231, §7 (AMD) .]

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, to the extent applicable.

[1985, c. 496, Pt. A, §2 (NEW) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §5 (AMD). 1989, c. 312, §2 (AMD).
1997, c. 364, §5 (AMD). 2001, c. 231, §7 (AMD).

§10005. BOARD OF UNDERGROUND STORAGE TANK INSTALLERS; ADMINISTRATIVE PROVISIONS

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

[1987, c. 410, §6 (AMD) .]

2. Employees. With the advice of the board, the commissioner may appoint, subject to the Civil Service Law, 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.

[1985, c. 785, Pt. B, §147 (AMD) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1985, c. 785, §B147 (AMD). 1987, c. 410, §6 (AMD).

§10006. CERTIFICATION

1. Certification required. A person may not practice, or profess to practice, as an underground oil storage tank installer or underground oil storage tank inspector in this State or use the words "underground oil storage tank installer," "underground oil storage tank inspector" or other words or letters to indicate that the person using the words or letters is a certified underground oil storage tank installer or underground oil storage tank inspector unless that person is certified in accordance with this chapter.

[2007, c. 292, §1 (AMD) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

3. Proper underground oil storage tank installer certification class required. A person may not install or advertise to install underground oil storage tanks or remove, pursuant to Title 38, section 566-A, subsection 5, underground tanks used for the storage of Class 1 liquids unless the person has been certified in accordance with this subsection.

A. [1991, c. 817, §1 (RP).]

B. An underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed underground oil storage tanks and impressed-current cathodically protected tanks. [2007, c. 292, §1 (AMD).]

C. [2007, c. 292, §1 (RP).]

D. [1991, c. 817, §3 (RP).]

E. [2007, c. 292, §1 (RP).]

[2007, c. 292, §1 (AMD) .]

4. Proper underground gasoline storage tank remover certification class required.

[2007, c. 292, §1 (RP) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §7 (AMD). 1989, c. 312, §§3,4 (AMD).
1989, c. 845, §6 (AMD). 1991, c. 817, §§1-4 (AMD). 1997, c. 364, §6 (AMD).
2001, c. 231, §8 (AMD). 2007, c. 292, §1 (AMD).

§10007. PERSONS AND PRACTICES EXEMPT

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of:
[1985, c. 496, Pt. A, §2 (NEW).]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW).

§10008. RECIPROCITY

A person who is a resident of the State and has been certified in another state as an underground oil storage tank installer or underground oil storage tank inspector may, upon payment of a fee as established under section 10012, obtain a certification as an underground oil storage tank installer or underground oil storage tank inspector, if that person submits satisfactory evidence of certification as an underground oil storage tank installer or underground oil storage tank inspector in another state under qualifications equivalent to those specified in this chapter. [2001, c. 231, §9 (AMD).]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §8 (AMD). 1997, c. 364, §7 (AMD).
2001, c. 231, §9 (AMD).

§10009. CERTIFICATION REQUIREMENTS FOR PERSONS WORKING AS UNDERGROUND HAZARDOUS SUBSTANCE STORAGE TANK INSTALLERS

(REPEALED)

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1985, c. 763, §A95 (AMD). 1987, c. 410, §9 (RPR).
1989, c. 312, §5 (RP).

§10010. REQUIREMENTS FOR CERTIFICATION

An applicant for certification as an underground oil storage tank installer or an underground oil storage tank inspector must file a written application provided by the board, showing to the satisfaction of the board that that person meets the following requirements. [2007, c. 292, §2 (AMD).]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

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

A. Passage of an initial written or oral examination based on laws outlined in and any rules promulgated under Title 38, chapter 3, subchapter II-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks, any regulations promulgated by the federal Environmental Protection Agency regarding the installation and removal of underground oil storage tanks and any technical concepts necessary to understand and implement those laws, rules or regulations; [1989, c. 312, §7 (RPR); 1989, c. 845, §7 (AMD).]

B. Successful completion of an apprenticeship in accordance with this section and under the direct supervision of an underground oil storage tank installer; and [2007, c. 292, §3 (AMD).]

C. Passage of a final written or oral examination that is based on the laws outlined in and rules adopted under Title 38, chapter 3, subchapter 2-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks. [2007, c. 292, §4 (AMD).]

[2007, c. 292, §§3, 4 (AMD) .]

3-A. Apprenticeship requirements for new underground oil storage tank installers. An applicant for certification as an underground oil storage tank installer must meet the following apprenticeship requirements before being certified.

A. [1991, c. 817, §5 (RP).]

B. To be eligible to take the final examination for a certification, the applicant must provide documentation of field experience, under the apprenticeship of an underground oil storage tank installer, sufficient to demonstrate expertise in the installation and removal of tanks and piping. The board shall specify, in the rules adopted pursuant to paragraph D, the nature and extent of field experience required to demonstrate this expertise. [2007, c. 292, §5 (AMD).]

C. [2007, c. 292, §6 (RP).]

D. The board shall adopt rules to administer this section and to provide a variance to the apprenticeship requirements under paragraph B if the applicant can satisfactorily demonstrate training and experience comparable to completion of an apprenticeship. [2007, c. 292, §7 (AMD).]

[2007, c. 292, §§5-7 (AMD) .]

4. Education and examination for certification of new underground hazardous substance storage tank installers.

[1997, c. 364, §9 (RP) .]

5. Education and examination for certification of underground gasoline storage tank removers.

[2007, c. 292, §8 (RP) .]

6. Education and examination for certification of underground oil storage tank inspectors. An applicant for certification as an underground oil storage tank inspector must:

A. Pass a written or oral examination prepared by the board or such other exam as the board may deem equivalent that demonstrates the applicant's understanding of the following:

- (1) The underground oil storage tank requirements of Title 38, chapter 3, subchapter II-B;
- (2) Any rules regarding underground oil storage tanks adopted pursuant to Title 38, chapter 3, subchapter II-B by the Board of Environmental Protection;
- (3) Any regulations regarding underground oil storage promulgated by the federal Environmental Protection Agency; and
- (4) Any technical concepts necessary to understand and implement state and federal laws, rules and regulations regarding underground oil storage tanks; [2001, c. 231, §11 (NEW).]

B. Demonstrate valid certification or licensing by manufacturers of ancillary equipment that the applicant intends to inspect if the manufacturers require any such certification to maintain equipment warranties; and [2001, c. 231, §11 (NEW).]

C. If the applicant intends to inspect cathodic protection systems, demonstrate valid, nationally recognized certification or licensing that meets the requirements for a "cathodic protection tester" as specified in 40 Code of Federal Regulations, Section 280.12. [2001, c. 231, §11 (NEW).]

[2001, c. 231, §11 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §§10-12 (AMD). 1989, c. 312, §§6-10 (AMD). 1989, c. 845, §§7-10 (AMD). 1991, c. 817, §5 (AMD). 1997, c. 364, §§8-10 (AMD). 2001, c. 231, §§10,11 (AMD). 2007, c. 292, §§2 - 8 (AMD).

§10010-A. CERTIFICATION REQUIREMENTS REGARDING ON-SITE REMOVAL OF UNDERGROUND OIL STORAGE TANK USED FOR STORAGE OF MOTOR FUEL UNDER SUPERVISION OF DESIGNATED REPRESENTATIVE OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

(REPEALED)

SECTION HISTORY

1985, c. 763, §A96 (NEW). 1987, c. 410, §13 (AMD). 1989, c. 312, §11 (AMD). 1989, c. 845, §11 (AMD). 1997, c. 364, §11 (AMD). 2011, c. 206, §3 (RP).

§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. [1985, c. 763, Pt. A, §96 (NEW).]

SECTION HISTORY

1985, c. 763, §A96 (NEW).

§10010-C. EXAMINATION OF FIRE-FIGHTING PERSONNEL

(REPEALED)

SECTION HISTORY

1991, c. 817, §6 (NEW). 2007, c. 292, §9 (RP).

§10011. EXAMINATION FOR CERTIFICATION

1. Requirements; fees. Only a person satisfying the requirements of section 10010, subsections 1 and 2 may apply for examination in the manner prescribed by the board. The application must 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 6 may apply for reexamination upon payment of the prescribed fee.

[2007, c. 292, §10 (AMD) .]

2. Content. The written examination must test the applicant's knowledge of the skills and knowledge relating to storage tank installation, inspection or removal and such other subjects as the board requires to determine the applicant's fitness to practice. The board shall approve examinations required by this chapter for underground oil storage tank installers, underground gasoline storage tank removers and underground oil storage tank inspectors and establish standards for an acceptable performance.

[2001, c. 231, §13 (AMD) .]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §14 (AMD). 1989, c. 312, §12 (AMD). 1991, c. 817, §7 (AMD). 1997, c. 364, §§12,13 (AMD). 2001, c. 231, §§12,13 (AMD). 2007, c. 292, §10 (AMD).

§10012. FEES

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

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Disposal of fees and civil penalties. All fees received by the board under subsection 1 and civil penalties imposed under sections 10015 or 10016 must be paid to the Treasurer of State to be deposited into the Maine Ground and Surface Waters Clean-up and Response Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees and civil penalties does not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

[2015, c. 319, §4 (AMD) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1985, c. 626, §1 (AMD). 1987, c. 410, §15 (AMD). 1989, c. 312, §13 (AMD). 1991, c. 499, §8 (AMD). 1997, c. 364, §14 (AMD). 2001, c. 231, §14 (AMD). 2007, c. 497, §1 (AMD). 2015, c. 319, §4 (AMD).

§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. [1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

1985, c. 496, §A2 (NEW).

§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.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Inactive status. Upon request, the board shall grant inactive status to certified persons who do not practice or present themselves as underground oil tank installers, underground gasoline storage tank removers or

underground oil storage tank inspectors and maintain any continuing competency requirements established by the board.

[2001, c. 231, §15 (AMD) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §16 (AMD). 1989, c. 312, §14 (AMD).
1997, c. 364, §15 (AMD). 2001, c. 231, §15 (AMD).

§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.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. Grounds for disciplinary action. The following are grounds for an action to modify, reclassify, suspend, revoke or refuse to issue or renew a certificate or impose a civil penalty:

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; [1985, c. 496, Pt. A, §2 (NEW).]

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil storage tank installation or removal, underground gasoline storage tank removal or underground oil storage tank inspection or violation of any standard of professional behavior established by the board; [2001, c. 231, §16 (AMD).]

C. Subject to the limitation of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or 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 [1989, c. 845, §12 (AMD).]

D. Any violation of this chapter or any rule adopted by the board. [1985, c. 496, Pt. A, §2 (NEW) .]

[2007, c. 292, §11 (AMD) .]

2-A. Disciplinary action authority. For each violation of applicable laws, rules or conditions of certification, the board may take one or more of the following actions:

A. Issue warnings, censures or reprimands to a certified person or applicant. Each warning, censure and reprimand issued must be based on violations of different applicable laws, rules, or conditions of certification or on separate instances of actionable conduct or activity; [1989, c. 845, §13 (NEW).]

B. Suspend a certificate for up to 90 days for each violation or instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and, in total, may not exceed one year. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certified person's record; [1989, c. 845, §13 (NEW) .]

C. Impose civil penalties of up to \$1,500 for each violation or each instance of actionable conduct or activity; [1989, c. 845, §13 (NEW) .]

D. Impose conditions of probation upon an applicant or certified person. Probation may run for such time period as the board determines appropriate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or certified person; and such other conditions as the board determines appropriate. Cost incurred in the performance of terms of probation is borne by the applicant or certified person. Failure to comply with the conditions of probation is grounds for disciplinary action against a certificate holder; [1989, c. 845, §13 (NEW).]

E. Suspend or revoke a certificate pursuant to Title 5, section 10004; and [1989, c. 845, §13 (NEW).]

F. Refuse to issue or renew a certificate. [1989, c. 845, §13 (NEW).]

[1989, c. 845, §13 (NEW) .]

2-B. Consent agreements. The board may execute a consent agreement which resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant, the board and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if in the District Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

[1989, c. 845, §13 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2-C. Surrender of certificate. The board may require surrender of certificates. In order for a certified person's surrender of a certificate to be effective, a surrender must first be accepted by vote of the board. The board may refuse to accept surrender of the certificate if the certified person is under investigation or is the subject of a pending complaint or proceeding unless a consent agreement is first entered into pursuant to this chapter.

[1989, c. 845, §13 (NEW) .]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

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 District Court or whether criminal proceedings have been or may be instituted.

[1985, c. 496, Pt. A, §2 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

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.

[1985, c. 496, Pt. A, §2 (NEW) .]

6. Limitation of actions. An action by the board against a certified person for any violation of this chapter relating to a tank or equipment installed on or after September 16, 1991 must be commenced within 3 years after the violation is discovered, but the action may not be commenced more than 15 years after installation of the storage tank or equipment that is the subject of the violation.

[1999, c. 714, §1 (NEW) .]

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the Superior Court. Civil penalties accrue to the Maine Ground and Surface Waters Clean-up and Response Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7, notwithstanding any other provision of law. [2015, c. 319, §5 (AMD).]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1987, c. 410, §17 (AMD). 1989, c. 312, §15 (AMD). 1989, c. 845, §§12-14 (AMD). 1997, c. 364, §16 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 1999, c. 714, §1 (AMD). 2001, c. 231, §16 (AMD). 2005, c. 330, §2 (AMD). 2007, c. 292, §11 (AMD). 2015, c. 319, §5 (AMD).

§10016. UNCERTIFIED PRACTICE

1. Complaints. The board may receive or initiate complaints of uncertified practice as an underground oil storage tank installer or inspector.

[2007, c. 497, §2 (NEW) .]

2. Investigation. Complaints of uncertified practice under subsection 1 may be investigated by the board, the department or the Attorney General. If sufficient evidence of uncertified practice is uncovered, the evidence must be compiled and presented to the Attorney General or the local district attorney's office for prosecution.

[2007, c. 497, §2 (NEW) .]

3. Criminal penalties. Notwithstanding any other provision of law:

A. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector and intentionally, knowingly or recklessly fails to obtain certification as required by this chapter or intentionally, knowingly or recklessly practices or represents to the public that the person is authorized to practice after the certification required by this chapter has expired or been suspended or revoked commits a Class E crime; and [2007, c. 497, §2 (NEW) .]

B. A person who violates paragraph A when the person has a prior conviction under this subsection commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence, except that, for purposes of this paragraph, the date of the prior conviction must precede the commission of the offense being enhanced by no more than 3 years. [2007, c. 497, §2 (NEW) .]

[2007, c. 497, §2 (NEW) .]

4. Civil violations. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector without first obtaining certification as required by this chapter or after the certification has expired or has been suspended or revoked commits a civil violation for which a fine of not less than \$100 and not more than \$2,000 for each violation may be adjudged. An action under this subsection may be brought in District Court or Superior Court.

[2007, c. 497, §2 (NEW) .]

5. Injunctions. The Attorney General may bring an action in District Court or Superior Court to enjoin a person from violating subsection 4 and to restore to a person who has suffered any ascertainable loss by reason of that violation any money or personal or real property that may have been acquired by means of that violation and to compel the return of compensation received for engaging in that unlawful conduct.

A person who violates the terms of an injunction issued under this subsection shall pay to the State a fine of not more than \$10,000 for each violation. In an action under this subsection, when a permanent injunction has been issued, the

court may order the person against whom the permanent injunction is issued to pay to the Maine Ground and Surface Waters Clean-up and Response Fund under Title 38, chapter 3, subchapter 2-A the costs of the investigation of that person by the Attorney General and the costs of suit, including attorney's fees. In an action by the Attorney General brought against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to a person who has suffered any ascertainable loss any money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

[2015, c. 319, §6 (AMD) .]

SECTION HISTORY

2007, c. 497, §2 (NEW). 2015, c. 319, §6 (AMD).

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