

Review of Maine's Oil Discharge Reporting Statutes and Regulations

Prepared for the Maine Legislature's Standing Committee on Natural Resources
By the Bureau of Remediation & Waste Management,
Maine Department of Environmental Protection

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Executive Summary

This report reviews Maine's current oil (petroleum) discharge reporting statutes and regulations as they apply to above ground oil storage and handling facilities. The Department of Environmental Protection (DEP) was asked to conduct this evaluation at the request of the Maine Legislature's Committee on Natural Resources. The study included the establishment of a focus group made up of stakeholders from the regulated community, and public interest and environmental groups. The focus group met twice with the Department to discuss issues and make suggestions related to the oil discharge reporting and was provided the opportunity to comment on the report and the Department's draft recommendations. The scope of the report is limited to those above ground oil storage tank (AST) and handling facilities which must maintain a federally required SPCC (Spill Prevention, Control and Countermeasure) plan.

Included in the report are an overview of existing relevant Maine statutes and regulations, current Department practices, and the oil discharge reporting requirements of other states and the U.S. Environmental Protection Agency. Also provided is a summary of the oil discharge history of Maine AST facilities. Finally, the report gives a summary of the focus group's comments and suggestions, and the Department's recommendations to the Maine Legislature for possible changes.

Maine statute prohibits the discharge of oil, regardless of the amount or the location of the discharge. A definitive requirement to report a discharge does not exist in Maine statute. However, Maine law is unique among states in that it exempts a person responsible for a discharge from civil enforcement penalties if in return the discharge is immediately (within 2 hours) reported to the Department upon discovery and is promptly cleaned-up to the Commissioner's satisfaction. A telephone call to the Department suffices to meet the reporting requirement. The Department's survey of other states' requirements found no similar "carrot and stick" approach to encourage reporting. If a discharge is not reported, the party responsible does so at their own risk. At the heart of the issue the Department has been asked to re-evaluate, is whether to increase the volume of an oil discharge (e.g. 10, 50, or 200 gallons) under which a responsible party may enjoy this legal "safe harbor" from civil penalties for having had a prohibited oil discharge.

The Department has in the past used its enforcement discretion and entered into contractual agreements with 18 individual industries and governmental entities regarding

the reporting and clean-up of oil discharges usually of 10 or less gallons at above ground oil storage and handling facilities. These memoranda of agreements (MOA) were voluntary and only agreed upon after the Department had evaluated the facility's spill containment, emergency response and clean-up capabilities, and found them to be satisfactory. The content of the MOAs are very similar to a reporting mechanism currently available in statute and Department regulations for underground oil storage tank (UST) facilities. The terms of these MOAs provided the facility an alternative means of reporting smaller oil spills. Discharges are required to be cleaned-up and a log of the specifics of the spill and its clean-up is required. The log is submitted to the Department annually and available for inspection at any time. The MOAs are enforceable. Although most members of the focus group liked the MOA concept as a mechanism for implementing an alternative means of reporting discharges, the lack of public knowledge and public input were a widely expressed concern. In response to these legitimate concerns, the Department placed a temporary moratorium on MOAs with new facilities, pending the outcome of legislative discussions and action. Existing MOAs that have expired or are about to expire are being extended, following public notice, on a short-term basis, also awaiting any legislative action.

As an early step in this review, the Department staff conducted a survey of 12 states and the U.S. Environmental Protection Agency (EPA) regarding their oil spill reporting requirements, then compared them to Maine's. Department staff compiled a survey of 10 questions pertaining to requirements for reporting oil spills at AST and underground storage tank (UST) facilities. The survey was sent to the EPA Region I and the following selected states: California, Connecticut, Indiana, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Texas, Vermont and Wisconsin. The survey was not intended to be representative of all states. The Department was interested in the reporting requirements of other New England and Northeast states along with a diverse mix of other states across the country.

Most states required discharges or spills to be reported to the state's department of environmental protection or equivalent. EPA requires reporting to the National Response Center. California also required reporting to local government and Ohio required reporting to counties. With the exception of Maine and Ohio, reporting requirements did not differ for AST or UST facilities. Reportable quantities ranged from all discharges (California, Connecticut, New Jersey, Rhode Island and Maine) to 1000 gallons. All states were less than 25 gallons other than New Hampshire and Ohio (25 gallons), and Indiana (1000 gallons). At the federal level, reporting is only required (regardless of the volume) if the spill causes or threatens to cause a sheen on a navigable surface water body.

Except for New Jersey, having a SPCC plan in place made no difference in discharge reporting requirements. Again, no other state other than Maine was found to provide an exemption from civil penalties in return for the reporting and clean-up of an oil spill.

An extensive analysis of oil discharges at AST facilities is provided for the time period of 1995 to 2004. AST discharges are a significant source of new oil pollution sites facing the Department's remediation program. Over this 10 year time frame, approximately 1800 oil discharges from AST facilities were reported to the Department. The single largest category was smaller volume spills of 10 or less gallons (41%). Discharges over 50 gallons accounted for 24% of the total discharges. Discharges are further broken down by their source – the type of facility storing and handling oil. The fewest

discharges were reported by marinas and airports (2%) while the most, 37%, were reported at commercial businesses (e.g. stores, fleet fueling, other businesses using oil). Industrial (manufacturing) facilities accounted for 10 % of all reported discharges, but had the most large discharges (more than 200 gallons) – 20%.

The cost to the State of Maine to remediate the above discharges is also analyzed. Two conclusions become obvious – a relatively small number of discharges account for most of the remediation costs, and the larger the discharge the more it costs to clean-up. Maine's Ground Water Oil Clean-up Fund and the Coastal and Inland Surface Oil Clean-up Fund incurred costs in excess of \$7.3 million remediating AST facility discharges from 1995 to 2004. A relatively small percentage of facilities (16%) accounted for these expenditures. The single largest share (40%) of these expenditures resulted from motor fuel discharges at service stations, although they only accounted for 7% of all discharges. 70% of all expenditures, regardless of the source facility, were spent on discharges of 50 gallons or more, while in comparison small discharges (10 gallons or less) accounted for only 2% of total costs.

A summary and discussion of the focus group's and its members' suggestions is included in the report. Opinions and suggestions from the focus group were as varied as the members and their interests. The purpose of the focus group was to provide the Department information and input for the purpose of developing its recommendations for this report. Reaching a consensus was never the goal of the focus group meetings nor would it have been practical. At the conclusion of the second meeting of the focus group, participants were invited to provide any specific proposals and any additional comments they wished. A number were provided by e-mail and are found in the appendices of the report.

There were several areas of common understanding that were expressed by a sizeable number of the stakeholders.

- 1) Any variation from the current oil discharge reporting statutes, such as establishing a possible de minimus oil discharge reporting volume, should be implemented on a facility specific basis, so that site specific variables important to the prevention and containment of oil discharges, the extent of their public health and environmental risk, and their prompt clean-up can be taken into account.
- 2) The use of memorandums of agreement between the Department and individual members of the regulated community is probably the most workable implementation mechanism.
- 3) The MOA development process should be encoded in rules or statute, establishing a clear set of eligibility criteria, and ensuring that the public is informed and provided with a means to participate.
- 4) Establishing a de minimus reporting volume such that small discharges need not be reported immediately to the Department's response personnel would make more efficient use of the time of the Department's responders.

The paper industry provided a couple of fairly comprehensive proposals. The first was from Representative Saviello, also an environmental manager for International Paper Company, which would establish a de minimus oil spill reporting volume of 50 gallons or less for oil products other than gasoline, and if the facility had a licensed waste water treatment plant, a SPCC plan, and the discharge was limited to an impervious surface where they could be cleaned-up within 24 hours. Instead of calling the Department, the

discharge would be reported by maintaining a log, and submitting the log periodically to the Department. Oil discharges to the facility's sewer system would not have to be cleaned-up. Representative Saviello proposed implementing the above by way of a statute change authorizing the Department to enter into memorandums of agreement with interested parties.

The Maine Pulp and Paper Association (MPPA) made a similar proposal to that of Representative Saviello's, except advocated an even larger volume de minimus reporting volume of 200 gallons per incident. The other key difference between the Saviello and MPPA proposals was that the MPPA proposal included discharges to bare soil, which Representative Saviello did not.

The paper industry's proposals and the overall discussions of the focus group raise a number of issues that the report analyses and discusses further. These include:

- 1) The oil discharge reporting process needs to be publicly transparent; and reports of oil discharges need to be available to the public.
- 2) If an oil discharge goes to a wastewater treatment plant unabated, is that alone good enough?
- 3) What degree of regulatory relief is achieved by the various suggested de minimus oil spill volumes?
- 4) Is an across-the-board de minimus discharge reporting scheme practical, and does it adequately protect the public and the environment?

The Department is not recommending a major change to Maine statutes to the Maine Legislature. Instead the Department recommends a modest change to the current regulatory structure governing the reporting of some surface oil discharges or spills as a compromise of the desires of the regulated community while ensuring an adequate baseline of protection of public health and the Maine environment from oil discharges.

These recommendations only apply to fixed facilities; which store oil in above ground tanks (ASTs), or handle and use oil at such facilities. Our recommendations do not apply to underground oil storage tank (UST) facilities since they already enjoy an alternative surface spill reporting mechanism for small surface spills. They also do not apply to transportation spills; discharges from home heating oil tanks, discharges to soil that may contaminate groundwater, or discharges to a surface water body.

The Department's recommendations are based on furthering three objectives:

- 1) To provide additional incentives to the regulated community to comply with existing oil pollution prevention and mitigation requirements;
- 2) To free up Department response personnel from overseeing all small oil spills and thereby freeing up staff to focus on larger discharges at locations where the public health and environmental risks are greater; and,
- 3) To provide the regulated community with considerable regulatory relief and provide greater consistency between UST and AST facility requirements.

The Department is recommending an alternative method of reporting and clean-up oversight for oil discharges of 10 or less gallons at AST facilities and inside buildings. To qualify, a facility could not be located on a sensitive environmental site, would need to have a current SPCC plan, and the discharge is limited to an impervious surface, cleaned-up within 24 hours, and recorded on a log maintained at the facility and provided to the Department annually. This option for reporting would be implemented by

way of MOAs between individual facilities and the Department. The eligibility criteria and approval process for such MOAs would be codified using existing Maine Board of Environmental Protection rulemaking authority, thereby ensuring a very public process in accordance with the Maine Administrative Procedures Act. The agreements themselves and the spills reported under these agreements would be made available to the public.

