**Chapter 693: OPERATOR TRAINING for underground OIL, hazardous substance, ANd FIELD CONSTRUCTED UNDERGROUND OIL STORAGE FACILITIES, and AIRPORT HYDRANT SYSTEMS**

**SUMMARY**: This chapter establishes training requirements for operators of underground oil storage facilities regulated under the *Oil Storage Facilities and Ground Water Protection Law,* 38 M.R.S. §§ 561 through 570-L and *Rule for Underground Oil Storage Facilities,* 06-096 C.M.R. ch. 691, and underground hazardous substance storage facilities regulated under *Rules for Underground Hazardous Substance Storage Facilities*, 06-096 C.M.R. ch. 695.

**1. Purpose.** This rule seeks to reduce releases of oil and hazardous substances to the environment by ensuring that operators of certain underground oil and hazardous substance storage facilities are properly trained. The requirements of this chapter are intended to satisfy the minimum training requirements specified by the United States Environmental Protection Agency pursuant to 42 U.S.C. §6991i (2016).

**2. Definitions.** The following terms, as used in this chapter, have the following meanings:

A. **Aboveground oil storage tank.** "Aboveground oil storage tank" means any aboveground container, less than 10% of the capacity of which is beneath the surface of the ground, that is used or intended to be used for the storage or supply of oil. Included in this definition are any tanks situated upon or above the surface of a floor and in such a manner that they may be readily inspected. Drums or other storage containers that have capacity of 60 gallons or less and oil-containing electrical equipment are not included in this definition.

A-1. **Airport Hydrant System.** “Airport Hydrant System” means large diameter piping that fuels aircraft, operates under high pressure, is part of an underground oil storage facility and typically terminates into one or more hydrants.

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

C. **Department.** "Department" means the Maine Department of Environmental Protection composed of the Board of Environmental Protection and the Commissioner.

D. **Facility.** "Facility" means an underground oil storage facility or an underground hazardous substance storage facility.

D-1 **Field Constructed Underground Oil Storage Facility**. “Field Constructed Underground Oil Storage Facility” means a facility with an underground oil storage tank that is constructed in the field, including a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.

E. **Hazardous substance.** "Hazardous substance" means any liquid containing a hazardous substance as defined under the *Uncontrolled Hazardous Substance Sites Law,* 38 M.R.S. §1362, except that, for the purpose of this rule, a liquid is not a hazardous substance because it contains:

(1) A substance identified as hazardous waste under *Identification of Hazardous Waste,* 06-096 C.M.R. ch. 850 of Department rules;

(2) Oil as defined in this section; or

(3) Waste oil as defined in the *Maine Hazardous Waste, Septage and Solid Waste Management Act,* 38 M. .S. §1303-C(42).

For the purpose of this rule, "hazardous substance" does not include: liquids containing hazardous substances in such low concentrations that the liquid meets state and federal standards for human consumption; and liquids that the commissioner determines will have no adverse human health or environmental impact if released to the environment.

F. **Motor fuel.** "Motor fuel" means oil that is motor gasoline, aviation gasoline, #1 or #2 diesel fuel or any grade of gasohol, gasoline or distillate fuel typically used in the operation of a vehicle, generator or other internal combustion engine.

G. **M.R.S.** “M.R.S. ” means the Maine Revised Statutes.

H. **Oil.** "Oil" means oil, oil additives, 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 nonhazardous waste, crude oils and all other liquid hydrocarbons regardless of specific gravity. “Oil” does not include propane, liquefied natural gas or other liquefied petroleum that is a gas at ambient temperatures.

I. **Operator.** “Operator” means any natural person who is in control of and responsible for the operation of a facility as defined in this section who has been trained and certified in accordance with this rule.

(1) **Class A operator**. “Class A operator” means the owner, employee or agent who has primary responsibility for operation and maintenance of the facility. A Class A operator at an underground oil storage facility manages resources and personnel to achieve and maintain compliance with the Department *Rule for Underground Oil Storage Facilities*, 06-096 C.M.R. ch. 691, §§ 1 through 5 , 7 and 11 through 13. A Class A operator at an underground hazardous substance storage facility manages resources and personnel to achieve and maintain compliance with 06-096 C.M.R. ch. 695.

(2) **Class B operator**. “Class B operator” means the owner, employee or agent who has responsibility for the day-to-day on-site operation and maintenance of the facility. A Class B operator at an underground oil storage facility implements the requirements of 06-096 C.M.R. ch. 691, §§ 1 through 5 , 7 and 11 through 13 at the underground oil storage facility. A Class B operator at an underground hazardous substance storage facility implements the requirements of 06-096 C.M.R. ch. 695.

(3) **Class C operator**. **“**Class C operator” means the facility owner, employee or agent who has responsibility for the initial on-site response to alarms or other indications of emergencies caused by spills or releases from the facility. A Class C operator at an underground oil storage facility typically controls or monitors the dispensing and sale of oil at a facility.

(4) **Class A/B operator**.“Class A/B operator” means the facility owner, employee or agent certified as an operator using the TankSmart program. A Class A/B operator may perform the responsibilities of the Class A and Class B operator.

J. **Owner.** "Owner" means any person who alone, or in conjunction with others, owns a facility as defined in this section. When the owner and operator of a facility are different entities (e.g. landlord and tenant), the owner shall take the actions required by this chapter in coordination with the facility operator who shall cooperate with the owner and both entities shall be responsible for ensuring that the actions are taken.

K. **TankSmart program.** “TankSmart program” means the proprietary program developed by the Department pursuant to Section 7 of this chapter.

L. **Underground hazardous substance storage facility.** “Underground hazardous substance storage facility,” also referred to as "facility," means any underground hazardous substance storage tank or tanks together with associated piping and dispensing facilities located under any land at a single location and used, or intended to be used, for the storage or supply of a hazardous substance.

M. **Underground hazardous substance storage tank.** “Underground hazardous substance storage tank” as defined in this section, means any container, including piping, 10 percent or more of the volume of which is beneath the surface of the ground and which is used, or intended to be used, for the storage or supply of a hazardous substance as defined in this section, but does not include any tanks situated in an underground area if these tanks or containers are situated upon or above the surface of a floor and in such a manner that the entire exterior surface of the tank may be readily inspected.

N. **Underground oil storage facility.** "Underground oil storage facility" means any underground oil storage tank or tanks, as defined in Section 2(O), together with associated piping and dispensing equipment located under any land at a single location and used, or intended to be used, for the storage or supply of oil, as defined in this rule. “Underground oil storage facility” also includes piping located under any land at a single location associated with aboveground storage tanks and containing 10 percent or more of the facility’s volume capacity.

O. **Underground oil storage tank.** "Underground oil storage tank" means any container, 10 percent or more of its volume being beneath the surface of the ground and which is used, or intended to be used, for the storage, use, treatment, collection, capture or supply of oil as defined in this section, but does not include tanks or containers situated on or above the surface of a floor in such a manner that they may be readily inspected.

**3. Applicability.** The requirements of this chapter apply to underground storage facilities, including but not limited to, those used for the storage of motor fuels, hazardous substances or waste oils and those used in the marketing and distribution of oil. The requirements of this chapter do not apply to:

A. Farm or residential tanks less than or equal to 1,100 gallons containing motor fuels for non-commercial use; and

B. Tanks used for storing heating oil for consumptive use on the premises regulated under 06-096 CMR 691, §6.

**4. Trained operators required.** A facility shall have designated, trained and certified operators as set forth in this chapter by August 8, 2012, except that for field constructed underground oil storage facilities regulated under 06-096 C.M.R ch. 691, §8 and airport hydrant systems regulated under 06-096 C.M.R ch. 691, §10, a facility shall have designated, trained and certified operators as set forth in this chapter by December 31, 2019.

**5. Designation of operators**

A. For a facility that is manned during all times that the facility is operational, the owner shall designate a Class A, Class B and Class C operator. A certified Class A, B or C operator shall be present during all times that the facility is operational except for unmanned facilities as provided below. In addition, a certified Class A or B operator must inspect the facility at least weekly.

B. For a facility that is unmanned during times that the facility is operational, the owner shall designate a Class A, Class B and Class C operator. The certified Class A or Class B operator must inspect the facility at least weekly, unless an alternative schedule and/or inspection and verification process has been approved by the Department. In addition, the owner shall install signage which meets the requirements of the Department of Public Safety *Rules and Regulations for Flammable and Combustible Liquids*, 16-219 C.M.R. ch. 34, §2 (effective March 17, 2009). This signage shall also direct users of the facility to contact the Class A, Class B or Class C operator in the event of an oil spill or other emergency at the facility and provide that contact information. Whenever the unmanned facility is operational, a Class A, B or C operator shall be available to respond to any emergency calls. Underground tanks for emergency generators are considered unmanned.

C. For a facility that is both manned and unmanned during the time that the facility is operational, the owner shall designate a certified Class A, Class B and Class C operator. A certified Class A, B or C operator must be present during all times that the facility is manned. The certified Class A or Class B operator must inspect the facility at least weekly In addition, the owner shall install signage that meets the requirements of 16-219 C.M.R. ch. 34, §2. This signage shall also direct users of the facility to contact the Class A, Class B or Class C operator in the event of an oil spill or other emergency at the facility and provide that contact information. Whenever the facility is operational, whether manned or unmanned, a Class A, B or C operator must be available to respond to any emergency calls.

A person may be designated to fulfill the responsibilities of more than one operator class and may be designated as an operator of more than one facility.

All facilities must maintain records of the weekly inspections at the facility or the owner’s place of business for three years.

**6. Training of operators.** Each person designated as an operator under Section 5 shall complete the applicable training requirements of this section. A person designated to fulfill more than one operator class shall complete the training requirements for each class for which he or she is designated.

**NOTE:** Although the minimum training guidelines specified by the United States Environmental Protection Agency pursuant to 42 U.S.C. §6991i ( 2016) specify three classes of operator, the Department has combined the training requirements for Class A and B operators into a single Class A/B operator training.

A. **Class A operators.** Class A operators shall complete training as provided in this Section 6(A).

(1) When the facility is an underground oil storage facility, Class A operators shall complete training developed by the Department or complete training approved by the Department and provided by a third party on the following topics:

(a) General knowledge of oil storage tank system requirements and the operational, maintenance, reporting and recordkeeping requirements of 06-096 C.M.R. ch. 691, §§ 1 through 5, 7 and 11 through 13, including requirements for spill prevention, overfill prevention, release detection and reporting, corrosion protection, inspection, emergency response and product compatibility;

(b) Financial responsibility documentation requirements;

(c) Temporary and permanent closure requirements;

(d) Class B and C operator training requirements; and

(e) Annual facility inspection requirements.

(2) When the facility is an underground hazardous substance storage facility, field constructed underground oil storage facility or airport hydrant system, the facility owner shall develop and implement a written training plan that meets the requirements of 06-096 C.M.R. ch. 695, §9 and 42 U.S.C. §6991i ( 2016) that has been submitted to and approved by the Department.

B. **Class B operators.** Class B operators shall complete training as provided in Section 6(B).

(1) When the facility is an underground oil storage facility, Class B operators shall complete training developed by the department or complete training approved by the Department and provided by a third party on the following topics:

(a) Operation and maintenance requirements of 06-096 C.M.R. ch. 691, §1 through 5, 7 and 11 through 13, including requirements for spill prevention, overfill prevention, release detection and reporting, corrosion protection, emergency response, product compatibility and recordkeeping;

(b) Facility components and materials;

(c) Methods of release detection and prevention; and

(d) Class C operator training requirements.

(2) When the facility is an underground hazardous substance storage facility, field constructed underground oil storage facility, or airport hydrant system, the facility owner shall develop and implement a written training plan that meets the requirements of 06-096 C.M.R. ch. 695, §9 and 42 U.S.C. §6991i (2007) that has been submitted to and approved by the Department.

C. **Class C operators.** Class C operators shall be trained by a Maine certified Class A operator or a Maine certified Class B operator using a training checklist provided or approved by the Department.

(1) At a minimum, Class C operators at underground oil storage facilities must receive training on the following topics:

(a) Recognizing and responding to evidence of a possible leak as defined in 06-096 C.M.R. ch. 691, §12;

(b) The spill reporting and recordkeeping requirements under 06-096 C.M.R. ch. 691, §12; and

(c) Underground oil storage facility, field constructed underground oil storage facility, or airport hydrant system facility safety as applicable.

(2) At a minimum, Class C operators at underground hazardous substance storage facilities must receive training on the following topics:

(a) Recognizing and responding to evidence of a possible leak as defined in 06-096 C.M.R. ch. 695, §10;

(b) The spill reporting and record keeping requirements under 06-096 C.M.R. ch. 695, §10; and

(c) Underground hazardous substance storage facility safety.

**7. Department responsibility.** The Department shall develop and administer a training program for underground oil storage facilities that includes an examination to evaluate operator knowledge in each subject area listed under paragraphs 6(A)(1) and 6(B)(1) for Class A and B operators respectively. The Department shall combine the training and examination requirements for Class A and B operators. The Department shall review and authorize written training plans for underground hazardous substance storage facilities, field constructed underground oil storage facilities, or airport hydrant system meeting the requirements in Section 6(A)(2) and 6(B)(2).

**8. Certification.** The Department shall provide a Certificate of Training to each person who achieves a passing grade on the applicable training program examination for underground oil storage facilities. Certificates of Training for training programs provided by others will be issued by those entities as part of the training requirements as set forth in authorized plans for underground hazardous substance storage facilities, field constructed underground oil storage facilities, or airport hydrant systems as approved by the Department. A copy of the certificates for Class A and Class B operators must be kept at each facility where the operator has oversight responsibilities for three years and must be provided to Department staff and Maine Certified Tank Installers or Inspectors upon request. Class A or B operators must be certified within 30 days after assuming operation and maintenance responsibilities at a facility, unless otherwise approved by the Department in writing. Any certificate issued for Class A or B operators under this chapter will expire two years after issuance except as provided in Section 9.

For a Class C operator, a training checklist provided or approved by the Department and signed by the Class C operator and the certified Class A or B operator who provided the training must be kept at the facility where the operator is employed for three years. A training checklist signed by the Class C operator and a certified Class A or B operator constitutes certification of the Class C operator. Class C operators must be certified before assuming responsibility for responding to emergencies. A training checklist that constitutes certification for a Class C operator will expire two years after the date of the signatures except as provided in Section 9.

Each facility also shall maintain a Class C operator training record provided by or approved by the Department that documents all current Class C operators employed at the facility and shall make the training record available to Department staff and Maine Certified Tank Installers or Inspectors upon request.

**9. Retraining and recertification**

A. All designated Class A, B and C operators must be retrained and recertified every two years except as provided below. It is the responsibility of owners, operators and certified operators to track certification and expiration dates.

B. In addition to the requirements of Section 9(A), if the Department determines, after notice and opportunity for a hearing, that a facility is out of compliance with applicable statutes and rules, the designated Class A and B operators for that facility shall be retrained and recertified within 30 days of the determination. The Department may require the use of a specific retraining and recertification program for Class A and B operators required to be retrained after a finding of non-compliance. All Class A, Class B and Class A/B certificates must include a condition providing that the certificate expires within 30 days of the Department’s determination of noncompliance unless the requirements for retraining and recertification are met.

C. In addition to the requirements of Section 9(A) and (B), if the registered method of leak detection or overfill prevention at a facility is changed, the designated Class A, B and C operators for that facility shall be retrained and recertified within 30 days of the change. All Class A, Class B and Class A/B certificates must include a condition providing that the certificate expires within 30 days of any change in the registered method of leak detection or overfill prevention at a facility unless the requirements for retraining and recertification are met.

1. **Annual certification.** An owner may elect to retrain and recertify designated Class A and B operators every year. Class A and B operators that are retrained and recertified every year need not retrain and recertify as required in Section 9(B) if the Department determines that a facility is out of compliance.

**11. Training provided by others.** A person may apply to the Department for authority to train Class A and Class B facility operators using a program developed by a third party. The application must be in writing and must include sufficient information for the Department to determine if the criteria of Section 11(A) are met.

A. The Department may authorize the use of third party training programs in lieu of the TankSmart program for Class A and B operators using a letter of approval if the Department determines the third party program:

(1) Provides training equivalent to the program for Class A and B operators developed by the Department pursuant to Section 7, and,

(2) Uses a Department approved written exam with a passing score of at least 80% to test operator knowledge and verify satisfactory completion of the training.

(3) Provides a Certificate of Training to the Department and the operator that meets the requirements of Section 9(B) and (C) above for each individual that passes the test; and

(4) Complies with applicable state and federal statutes, rules and regulations.

B. **Completeness of application.** Within 15 days after receipt of an application under this section, the Department shall determine whether the application contains sufficient information and is complete for processing. If the application is determined to be incomplete, Department staff shall notify the applicant in writing and specify the information that needs to be supplied. In reviewing applications determined to be complete, the Department may require additional information from the applicant as necessary to determine if the third party training program meets the approval criteria of Section 11(A).

C. **Decision; appeal.** Within 90 days after receiving the application and all additional information requested pursuant to Section 11(B), the Department shall:

(1) Grant the application, with or without conditions, and set forth written findings explaining the basis for the Department's determination that the training program meets the criteria of Section 11(A); or

(2) Deny the application and set forth written findings that explain the basis for denial.

If, in reviewing an application determined to be complete, the Department requires additional information from the applicant and the applicant fails to respond within 60 days after the request is mailed by the Department, such inaction constitutes grounds on which the Department may deny the application.

The Department shall mail a copy of the final decision to the applicant by certified mail, return receipt requested, and shall include with the decision a plain statement of the manner in which the decision may be appealed to the Board of Environmental Protection as provided under Chapter 2 of the Department rules. See *Rules Concerning the Processing of Applications and Other Administrative Matters,* 06-096 C.M.R. ch. 2.

D. **Expiration and renewal of third party training programs.** Department approval of a third party training program under this section expires 2 years after the date of the letter of approval but may be renewed for additional 2-year terms upon re-application. In seeking renewal, the burden is on the applicant to demonstrate that the training program continues to meet the approval criteria under Section 11(A).

**NOTE:** To avoid a lapse in authority to operate a third party training program, applications for renewal must be provided on a form supplied by the Department and must be submitted at least 60 days before the approval expiration date.

STATUTORY AUTHORITY:

38 M.R.S. §§.341-H, 564(2-A)(L) and 1364(2)

EFFECTIVE DATE:

August 4, 2012 – filing 2012-212

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