# Chapter 1: ADMINISTRATIVE RULES

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Chapter 1: ADMINISTRATIVE RULES

**SUMMARY**: This chapter establishes basic operational procedures for the Maine Board of Underground Storage Tank Installers. Specifically, it details the organization of the Board; and standards of practice for underground tank installers and inspectors. Moreover, it provides for enforcement and disciplinary action by the Board, and enables the Board to issue advisory rulings.

**1. Purpose of rules**

**A. Rules.** The Board of Underground Storage Tank Installers hereby adopts rules for conducting the business of the Board, including a statement of purpose of the rules (Section 1); definitions of terms used in the rules (Section 2); provisions for the organization of the Board (Section 3); provisions setting standards of practice for underground oil storage tank installers and inspectors (Section 4); procedures for enforcement and disciplinary actions (Section 5); procedures for processing of requests for advisory rulings (Section 6); and a severability provision (Section 7).

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

**2. Definitions.** The following terms, as used in the Underground Storage Tank Installers Act (32 M.R.S.A. Section 10001, *et seq.*) and the Board's rules (Chapters 1‑6), have the following meanings unless the context otherwise indicates:

**A.** APPLICANT means a person who has applied for certification as an underground oil storage tank installer or underground oil storage tank inspector.

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

**C.** CLASS I LIQUID means any liquid having a flash point below 100 degrees Fahrenheit.

**D.** COMMISSIONER means the Commissioner of the Department of Environmental Protection.

**E.** DEPARTMENT means the Department of Environmental Protection.

**F.** GASOLINE means a volatile, highly flammable liquid with a flashpoint of less than 100o Fahrenheit obtained from the fractional distillation of petroleum.

**G.** INSTALLER means an underground oil storage tank installer.

**H.** 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 hydrocarbon regardless of specific gravity.

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

**J.** 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.

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

**L**. UNDERGROUND OIL STORAGE TANK INSPECTOR. "Underground oil storage tank inspector" means a person certified under this chapter to inspect underground oil storage tanks.

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

**3. Board organization**

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

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

**C. Board Records.** The official office of the Board is the Department of Environmental Protection, Bureau of Remediation and Waste Management. All records, minutes and advisory rulings of the Board must be kept at that office. Information may be obtained by making a written request to said office or the Board's staff.

**D. Management of Funds.** All fees received by the Board related to underground oil storage tank installers or underground oil storage tank inspectors must be deposited in the Board's account within the Maine Ground and Surface Waters Clean‑up and Response Fund, established by 38 M.R.S.A. Section 551. Expenditures from said account are subject to the approval of the Board. An annual report of the operations and financial position of the Board must be submitted to the Commissioner prior to August 1st of each year pursuant to 32 M.R.S.A. Section 10004(6).

**4. Standards of practice**

**A. Code of Ethics.** The Board adopts the following code of ethics for underground oil storage tank installers and underground oil storage tank inspectors:

(1) **Installer's and Inspector's Obligation to the Public**

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

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

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

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

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

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

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

(h) Installers and inspectors having knowledge of possible violations of the Board’s enabling statute as provided in Title 32 *Maine Revised Statutes Annotated* Chapter 104-A or this Code of Ethics shall provide the Board information and assistance necessary to the final determination of such violation.

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

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

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

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

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

(3) **Installer's and Inspector's Obligation to Other Installers and Inspectors**

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

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

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

**B. Continuing Education Requirement**

(1) **Continuing Education Requirement**. Beginning with the first application for certificate renewal, each installer and inspector shall provide evidence to the Board that at least eight (8) credit hours of Board approved continuing education have been satisfactorily completed since the last certificate was issued or renewed and prior to submission of the application for renewal. The Board may limit the number of credits granted for similar courses during a certification period.

(2) **Board Approval of Continuing Education Offerings Required**

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

(b) Such approval may take the form of:

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

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

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

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

(a) **Program Approval**

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

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

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

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

(b) **Individual Requests for Credit**

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

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

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

(iv) Installers, removers, or inspectors denied credit may seek reconsideration of such decisions within forty‑five (45) days of notification of Board denial.

(c) **Blanket Approval**

(i) Continuing education offerings sponsored by the Board or other professional organizations whose standards have been approved by the Board are accepted with program approval or an individual request for credit.

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

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

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

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

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

**5. Enforcement and disciplinary actions**

**A. Procedures for Processing of Complaints**

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

(2) In the initial correspondence, staff will:

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

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

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

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

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

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

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

(1) Refuse to issue a certificate.

(2) Refuse to renew a certificate.

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

(4) Issue a warning, censure or reprimand to a certified person or applicant. Each warning, censure and reprimand must be based on violations of different applicable laws, rules, or conditions or certification or on separate instances of actionable conduct or activity.

(5) 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 or probation, although the suspension remains part of the certified person's record.

(6) Impose civil penalties of up to $1,500 for each violation or each instance of actionable conduct or activity. Civil penalties accrue to the Maine Ground and Surface Waters Clean‑up and Response Fund.

(7) Impose conditions or 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 or probation is grounds for disciplinary action against a certificate holder.

**C. Adjudicatory Hearings**

(1) The Board may call and conduct adjudicatory hearings to assist with investigations, to determine whether grounds exist to take any disciplinary action permitted by subsection B of this section, deemed necessary to the fulfillment of its responsibilities.

(2) Before taking action under subsection B of this section the Board shall afford the installer, inspector, or applicant; an opportunity for an adjudicatory hearing to the extent required by 5 M.R.S.A. Sections 10003 and 10004.

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

**D. 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 subsection E of this section.

**E. Administrative Consent Agreements**

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

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

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

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

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

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

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

**F. Record Keeping**

(1) All information regarding a complaint will be kept on file in the Department of Environmental Protection, Bureau of Remediation and Waste Management.

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

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

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

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

**6. Advisory rulings**

**A. Authority and Scope.** The Board may issue an advisory ruling pursuant to 5 M.R.S.A. Section 9001 concerning the applicability to an existing factual situation of any statutes or rules it administers. Each request must be reviewed individually by the Chairperson to determine whether an advisory ruling is appropriate. The Chairperson may decline the request for an advisory ruling when the question is hypothetical, if there is insufficient experience upon which to base the ruling, or for any other reason deemed proper. The denial of a request may be appealed to the Board within twenty (20) days following the denial.

**B. Procedures for Processing of Requests for Advisory Rulings**

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

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

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

**7. Severability**

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

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

EFFECTIVE: July 29, 1988

 Amended: May 18, 1990

 Amended: August 17, 1990

 Amended: November 15, 1992

EFFECTIVE DATE (ELECTRONIC CONVERSION) : August 28, 1996

 Amended: May 17, 1998

 Amended: June 19, 2002

 Amended: August 9, 2006 – filing 2006-355

 Amended: February 3, 2008 – filing 2008-31

 Amended: February 21, 2016 – filing 2016-025

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 16, 2025