

MEMORANDUM

TO: Board of Environmental Protection

FROM: Scott Whittier, Bureau of Remediation and Waste Management

DATE: December 16, 2010

RE: Reposting of Chapter 693, Operator Training for Oil and Hazardous Substance Storage Facilities for Public Comment

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Description:

This rule establishes training requirements for operators of underground oil storage facilities regulated under 38 MRSA §§561 through 570-L and underground hazardous substance storage facilities regulated under Rules For Underground Hazardous Substance Storage Facilities, 06-096 CMR 695. The training requirements specified in the proposed rule are modeled after guidelines provided by USEPA (*Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005 (August 2007)*). The proposed rule establishes three operator classes (A, B, and C) and sets out the specific requirements for each class of operators. The Department has chosen to combine the training requirements for the Class A and Class B operators into a single Class A/B operator.

Department staff developed an operator training program for underground oil storage facilities, including specific training modules and testing procedures, which can be administered via the internet or in written format. The training program is available and is currently used by the regulated community.

The department will require that operators of underground hazardous substance storage facilities develop and implement a written training plan that has been submitted to and approved by the department that meets the requirements of the Energy Policy Act and the Rules for Underground Hazardous Substance Storage Facilities. There are currently 2 underground hazardous substance tanks located at 1 facility in the state.

Environmental Issues:

The proposed rule is intended to prevent releases of petroleum and hazardous substances by providing training to tank operators on the design and operation of the tank systems they operate. Special emphasis is placed on leak detection and leak prevention equipment. The focus of many of the Bureau of Remediation and Waste Management's activities deals directly with the oversight and regulation of underground oil and hazardous substance storage facilities, managing

spill events and overseeing remediation of contaminated sites. Implementation of this rule to train and certify the operators of these facilities will help reduce the incidence of discharges.

### History:

The Board held a public hearing on the draft rule in Augusta on October 7, 2010. The comment deadline was October 18, 2010 at 5:00 pm. Comments received at the public hearing and during the comment period focused primarily on:

- Extending the timeline for recertification from the proposed one year to a multi year time period.  
*Response: The department found this comment to have merit and is proposing to allow for annual or biennial recertification of Class A and B operators.*
- Allowing for the use of company/facility or third party training programs to substitute for the department's TankSmart training program.  
*Response: The department believes that the TankSmart program is the best option to ensure that there is a consistent, comprehensive and up to date training program available statewide for Class A and B operators at oil storage facilities. The department is not proposing to amend the rule on this issue.*
- Extending the effective date of the rule from January 1, 2011 to a later date.  
*Response: In light of the delays in getting the proposed rule to this point, the department agrees that extending the effective date is prudent. The revised rule proposes to extend the effective date to August 8, 2011.*
- Adding a retraining/recertification requirement should the department consider extending the timeline for recertification beyond one year. Absent annual recertification a retraining requirement is required by federal law for instances where the department determines non compliance with department statutes and rules at regulated facilities.  
*Response: This concern was provided to the department via comments from the Region 1 Office of the Environmental Protection Agency. One purpose of the rule is to create a training program that will satisfy EPA grant guidelines. As a result of proposing recertification on an annual and biennial schedule, the proposed rule has been amended to include a provision that would require retraining and recertification of operators whenever the department determined, after notice and an opportunity for a hearing, that there was non compliance with department statutes or rules at a facility.*

### Department recommendation:

Due to the extent and substantial nature of the proposed changes to the rule from the version that was the subject of the public hearing on October 7, the department recommends the Board repost Chapter 693, Operator Training for Oil and Hazardous Substance Storage Facilities for an additional 30 day comment period.

### Estimated Time of Presentation:

Approximately 30 minutes.