

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. [PL 2001, c. 231, §4 (AMD).]

SECTION HISTORY

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

§10002. Definitions

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

1. Board. "Board" means the Board of Underground Oil Storage Tank Installers established under this chapter.

[PL 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.

[PL 1989, c. 845, §4 (NEW).]

2. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

3. Department. "Department" means the Department of Environmental Protection.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

3-A. Hazardous substance.

[PL 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.

[PL 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.

[PL 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.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

5-A. Underground hazardous substance storage tank.

[PL 1997, c. 364, §3 (RP).]

5-B. Underground hazardous substance storage tank installer.

[PL 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.

[PL 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.

[PL 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.

[PL 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.

[PL 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.

[PL 1987, c. 491, §2 (AMD).]

SECTION HISTORY

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

[PL 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.

[PL 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.

[PL 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.

[PL 1987, c. 410, §4 (AMD).]

SECTION HISTORY

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

[PL 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.

[PL 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.

[PL 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.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

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

[PL 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.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

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

[PL 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.

[PL 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.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 1985, c. 496, §A2 (NEW). PL 1985, c. 785, §B147 (AMD). PL 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.

[PL 2007, c. 292, §1 (AMD).]

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

[PL 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. [PL 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. [PL 2007, c. 292, §1 (AMD).]

C. [PL 2007, c. 292, §1 (RP).]

D. [PL 1991, c. 817, §3 (RP).]

E. [PL 2007, c. 292, §1 (RP).]

[PL 2007, c. 292, §1 (AMD).]

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

[PL 2007, c. 292, §1 (RP).]

SECTION HISTORY

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

[PL 1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 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. [PL 2001, c. 231, §9 (AMD).]

SECTION HISTORY

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

§10009. Certification requirements for persons working as underground hazardous substance storage tank installers

(REPEALED)

SECTION HISTORY

PL 1985, c. 496, §A2 (NEW). PL 1985, c. 763, §A95 (AMD). PL 1987, c. 410, §9 (RPR). PL 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. [PL 2007, c. 292, §2 (AMD).]

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

[PL 1985, c. 496, Pt. A, §2 (NEW).]

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

[PL 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; [PL 1989, c. 312, §7 (RPR); PL 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 [PL 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. [PL 2007, c. 292, §4 (AMD).]

[PL 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. [PL 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. [PL 2007, c. 292, §5 (AMD).]

C. [PL 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. [PL 2007, c. 292, §7 (AMD).]

[PL 2007, c. 292, §§5-7 (AMD).]

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

[PL 1997, c. 364, §9 (RP).]

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

[PL 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; [PL 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 [PL 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. [PL 2001, c. 231, §11 (NEW).]

[PL 2001, c. 231, §11 (NEW).]

SECTION HISTORY

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

PL 1985, c. 763, §A96 (NEW). PL 1987, c. 410, §13 (AMD). PL 1989, c. 312, §11 (AMD). PL 1989, c. 845, §11 (AMD). PL 1997, c. 364, §11 (AMD). PL 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. [PL 1985, c. 763, Pt. A, §96 (NEW).]

SECTION HISTORY

PL 1985, c. 763, §A96 (NEW).

§10010-C. Examination of fire-fighting personnel

(REPEALED)

SECTION HISTORY

PL 1991, c. 817, §6 (NEW). PL 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.
[PL 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.
[PL 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.
[PL 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.
[PL 1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

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

[PL 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.

[PL 2015, c. 319, §4 (AMD).]

SECTION HISTORY

PL 1985, c. 496, §A2 (NEW). PL 1985, c. 626, §1 (AMD). PL 1987, c. 410, §15 (AMD). PL 1989, c. 312, §13 (AMD). PL 1991, c. 499, §8 (AMD). PL 1997, c. 364, §14 (AMD). PL 2001, c. 231, §14 (AMD). PL 2007, c. 497, §1 (AMD). PL 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. [PL 1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 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.

[PL 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.

[PL 2001, c. 231, §15 (AMD).]

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

[PL 1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY

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

[PL 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; [PL 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; [PL 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 [PL 1989, c. 845, §12 (AMD).]

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

[PL 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; [PL 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; [PL 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; [PL 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; [PL 1989, c. 845, §13 (NEW).]

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

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

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

[PL 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.

[PL 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.

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

[PL 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.

[PL 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. [PL 2015, c. 319, §5 (AMD).]

SECTION HISTORY

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

[PL 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.

[PL 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 [PL 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. [PL 2007, c. 497, §2 (NEW).]

[PL 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.

[PL 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.

[PL 2015, c. 319, §6 (AMD).]

SECTION HISTORY

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

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