

06-096 Chapter 696: OIL DISCHARGE PREVENTION AND POLLUTION CONTROL RULES FOR RAIL TANK CARS

SUMMARY: This chapter sets forth minimum inspection, preparedness, and reporting requirements for operators of rail tank cars transporting or storing oil in Maine.

1. **Preamble.** It is the purpose of this chapter to provide necessary oil spill prevention and control rules for the transportation and storage of oil in rail tank cars to prevent discharges of oil to the waters and lands of the State.
2. **Definitions.** The following terms as used in this chapter have the following meanings:
 - A. **Commissioner.** "Commissioner" means the Commissioner of Environmental Protection.
 - B. **Department.** "Department" means the Department of Environmental Protection composed of the Board of Environmental Protection and the Commissioner.
 - C. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping either directly or indirectly to the waters or lands of the State of Maine.
 - D. **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 wastes, crude oils, oil additives, and all other liquid hydrocarbons regardless of specific gravity. Oil does not include natural gas.
 - E. **Operator.** "Operator" means any person owning or operating a train or railroad whether by lease, contract or any other form of agreement.
 - F. **Person.** "Person" means any natural person, firm, association, partnership, corporation, trust, the State of Maine and any agency thereof, governmental entity, quasi-governmental entity, the United States of America and any agency thereof and any other legal entity.
 - G. **Rail tank car.** "Rail tank car" means non-highway ground transportation car designed to carry liquid freight that runs on rails.
 - H. **Response Plan.** "Response Plan" means a written oil spill prevention and response plan specified in 49 CFR § 130.31.
 - I. **Siding.** "Siding" means a section of a railroad track separate from the main line used to store, separate or connect rail cars.
 - J. **Train.** "Train" means one or more engines coupled with one or more rail cars, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.
3. **Applicability.** This rule applies to any operator of rail tank cars containing oil in the State of Maine and any other person discharging or suffering the discharge of oil from a rail tank car.

4. Oil Discharge Removal and Reporting Related To Rail Tank Cars.

A. Any person or operator discharging or suffering the discharge of oil prohibited by 38 M.R.S.A. §543 shall immediately undertake to remove such discharge to the Commissioner's satisfaction as required by 38 M.R.S.A. §548. Notwithstanding the above requirement, the Commissioner may undertake the removal or cleanup of that discharge, investigate and sample sites where an oil discharge has occurred, and may retain agents and contractors for those purposes.

B. In addition to the removal procedures, the following actions must be taken:

(1) Telephone Report. An initial telephone report of any discharge must be made to the Commissioner at (800) 482-0777 as soon as practicable but within two hours of discovery. The report must include:

(a) Time of discharge;

(b) Location of discharge;

(c) Type and amount of oil; and

(d) Name and telephone number of person making report.

5. Response Plan. Any person or operator who stores, leaves, or temporarily parks five (5) or more rail tank cars containing oil at a siding for more than five (5) consecutive days shall submit to the Department copies of the written Response Plans specified in 49 CFR § 130.31. If revised plans are submitted under 49 CFR § 130.31, copies of those revisions must also be submitted to the Department.

6. Inspections. Any person or operator who stores, leaves, or temporarily parks five (5) or more rail tank cars containing oil at a siding for more than five (5) consecutive days shall visually inspect the cars for evidence of oil discharges a minimum of every 12 hours and maintain a written log of the findings of such inspection. The inspection shall include:

A. The date and time of the inspection;

B. The location of the siding;

C. The number of rail tank cars containing oil;

D. The name of the inspector; and

E. The results of the inspection including a determination that there is no evidence of discharge of oil from the rail tank cars.

A copy of the written log may be requested from the operator by the Commissioner and shall be made available as soon as practicable upon such request.

EFFECTIVE DATE: March 26, 2015

BASIS STATEMENT

This rule establishes requirements for the remediation of any oil discharges from rail tank cars, requires the submission of federal Response Plans to the Department, and establishes inspection requirements for rail cars storing oil that are parked at a siding for more than 5 consecutive days. In recent years there has been a significant growth in the number of rail tank cars used to transport oil in Maine, with a concomitant increase in the use of these tank cars for longer-term storage of oil at rail sidings adjacent to rivers and residential areas. These practices pose a considerable risk to Maine's sensitive natural resources, including Class AA and Class A surface waters, and to groundwater serving public and private drinking water supplies. This emergency rule will provide the Department with accurate and timely information in the event of an oil discharge or other emergency event, and significantly reduce the likelihood of a release of oil that would create a local safety, public health, or environmental hazard.

Finding of Emergency

In February 2015, the Department was notified pursuant to federal regulations that a railroad carrier would be operating trains carrying 1,000,000 gallons or more of Bakken crude oil in the State of Maine. This notification caused the Department to examine whether its rules adequately address oil discharges from rail tank cars. The Department concluded that existing rules do not adequately address the threats posed by rail oil tank cars. Specifically, the Department finds that the transportation of large volumes of oil by rail and the storage of oil at rail sidings pose a significant and immediate risk to public health and safety and the environment. Emergency adoption of this rule is needed to reduce the likelihood that significant quantities of oil will be discharged into the environment, and in the case of an oil discharge, this rule will result in more timely and effective cleanup.