

38 §565-A. AUTHORITY TO PROHIBIT PRODUCT DELIVERY

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1. Order to cease deliveries. In addition to the enforcement actions allowed under sections 347-A and 348, the commissioner may, after providing an owner or operator of an underground oil storage tank with a notice of violation for failure to comply with a requirement of this subchapter and after providing a reasonable opportunity for correction of the violation, issue an administrative order requiring the owner or operator of the underground oil storage tank that is the subject of the violation to cease deliveries of oil to the tank and to cease operation of the tank and associated piping until the violation has been corrected. The commissioner shall issue an administrative order to cease deliveries to or operation of an underground oil storage tank subject to section 564 upon determining that:

A. The tank is not equipped with the spill prevention, overflow protection, leak detection or corrosion protection measures required under section 564 and applicable department rules; [2007, c. 534, §3 (NEW) .]

B. The tank is not being operated or maintained in compliance with section 564 and applicable department rules and the owner or operator has failed to gain compliance with the requirements within 30 days of being provided with a citation for or written notice of the violation; or [2007, c. 534, §3 (NEW) .]

C. There is evidence of an ongoing release of product from the tank or facility at which the tank is located. [2007, c. 534, §3 (NEW) .]

The commissioner may defer issuance of an administrative order to cease deliveries pursuant to this subsection if the commissioner determines that a delivery prohibition would jeopardize the availability of, or access to, oil in a remote area of the State. The deferral may not exceed 180 days. Notwithstanding the issuance of an administrative order under this subsection, the commissioner may authorize the owner or operator of the underground oil storage tank to dispense any remaining oil in the tank if, in the commissioner's judgment, doing so will not pose a threat of release of product or will reduce that threat.

[2007, c. 534, §3 (NEW) .]

2. Service. Service of an administrative order under subsection 1 must be made by hand delivery by an authorized representative of the department or by certified mail, return receipt requested. The person to whom the order is directed shall comply immediately or within the time period specified in the order or may appeal the order as provided in subsection 3.

[2007, c. 534, §3 (NEW) .]

3. Appeal. An administrative order under subsection 1 may be appealed to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

[2007, c. 534, §3 (NEW) .]

4. Identification of tanks subject to delivery prohibition. Whenever the commissioner issues an administrative order under subsection 1, department staff shall affix a red tag to the fill pipe of the underground oil storage tank. The owner or operator may not allow the deposit of oil into the tank while a red tag is affixed to the fill pipe.

As used in this section, "red tag" means a tag, device or mechanism devised by the department for use in signifying that an underground oil storage tank is ineligible for product delivery. The tag must be red in color and must bear words clearly conveying that it is unlawful to deposit oil into the tank. The tag must be made of plastic or other durable, damage-resistant material and must be designed to be easily affixed to the tank fill pipe.

[2007, c. 534, §3 (NEW) .]

5. Prohibition. A person may not deposit oil into an underground oil storage tank that has a red tag affixed to the fill pipe or tamper with the tag except to remove it as authorized by the commissioner under subsection 6.

[2007, c. 534, §3 (NEW) .]

6. Return to service. A red tag affixed pursuant to this section may not be removed until an underground oil storage tank inspector or underground oil storage tank installer certifies in writing to the commissioner that the applicable violations have been corrected and the commissioner authorizes removal of the tag. The commissioner shall remove or authorize the removal of the tag as soon as practicable upon receipt of the certification. The commissioner may remove or authorize the removal of the tag absent confirmation that the violations have been corrected in emergency situations or when removal is determined to be in the best interest of the public.

[2007, c. 534, §3 (NEW) .]

SECTION HISTORY

2007, c. 534, §3 (NEW) .

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