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DIVISION 1

PROCEDURAL RULES

130-001-0000
Notice

Prior to adoption, amendment or repeal of any rule, the commission shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the commission's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rules.

(3) By mailing or furnishing a copy of the notice to:

- (a) The United Press International;
- (b) The Associated Press;
- (c) Associations which have expressed an interest in and requested notice about the commission's activities;
- (d) The Capitol Press Room.

Stat. Auth.:

Hist.: OH 1-1990(Temp), f. & cert. ef. 1-18-90; OH 4-1990, f. & cert. ef. 3-27-90; OHC 1-1995, f. & cert. ef. 1-4-95

130-001-0005
Purpose

(1) The Oil Heat Commission, established by Oregon Laws 1989, Chapter 926, is authorized by law to adopt rules to carry out its statutory responsibilities.

(2) These rules describe how the commission will provide notice prior to the adoption of rules.

(3) These rules supercede the temporary rules adopted January 18, 1990 and are effective March 27, 1990.

Stat. Auth.:

Hist.: OH 1-1990(Temp), f. & cert. ef. 1-18-90; OH 4-1990, f. & cert. ef. 3-27-90

130-001-0010

Statutory Authority and Procedure

These rules are authorized by and carry out purposes of Oregon Laws 1989, Chapter 926 and were adopted pursuant to Section 39 of Oregon Laws 1989, Chapter 926 and ORS 183.310 et seq.

Stat. Auth.:

Hist.: OH 1-1990(Temp), f. & cert. ef. 1-18-90; OH 4-1990, f. & cert. ef. 3-27-90

DIVISION 5

HEATING OIL ASSESSMENT

130-005-0000

Purpose

(1) The Oil Heat Commission, established by Oregon Laws 1989, Chapter 926, is charged with assessing oil marketers to finance the costs of the commission for education and conservation and for remedial action for leaking heating oil tanks.

(2) These rules describe the basis for determining and collecting that assessment.

(3) These rules supercede the temporary rules adopted December 7, 1989 and are effective April 1, 1990.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0010

Statutory Authority and Procedure

These rules are authorized by and carry out purposes of Oregon Laws 1989, Chapter 926 and were adopted pursuant to Section 39 of Oregon Laws 1989, Chapter 926 and ORS 183.310 et seq.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0020

Definitions

All terms in these rules have the same meaning as their common usage unless the rules state a different meaning. In addition, the following specific definitions shall apply:

(1) "Assessments" means the moneys to be collected from oil marketers under Sections 19 and 29 of Oregon Laws 1989, Chapter 926.

(2) "Commission" or "OHC" means the Oil Heat Commission established by Section 4(1) Oregon Laws 1989, Chapter 926.

(3) "Heating Oil" means Number 1 or 2 heating oil that is delivered to a tank and used to create heat, excluding only the petroleum products that are subject to the requirements of Section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(4) "Heating Oil Education and Conservation Assessment" means the assessment established by Section 19 of Oregon Laws 1989, Chapter 926.

(5) "Heating Oil Remedial Action Assessment" means the assessment established by Section 29 of Oregon Laws 1989, Chapter 926.

(6) "Oil Marketer" means a person who supplies heating oil at retail in this state.

(7) "Person" has the meaning given that term in ORS 174.100.

(8) "Gross revenue" means gross receipts, excluding taxes, from retail sales of heating oil made or provided in Oregon by an oil marketer. The term includes all revenue derived from retail sale of product by an oil marketer in Oregon in the regular course of business, but does not include revenue derived from any other products or services not directly related to the retail sale of heating oil.

(9) "Retail Sales" means sales to the ultimate consumer.

(10) "Ultimate consumer" means a customer who purchases heating oil for his own use and not for resale.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0030

Heating Oil Education and Conservation Account Assessment

The commission shall by order establish the amount and the effective date of the Heating Oil Education and Conservation Assessment:

(1) The assessment shall not exceed one and one-quarter percent of the gross revenues derived from the retail sale of heating oil in Oregon by oil marketers.

(2) The assessment shall not apply to any gross revenues derived before the effective date of the order.

(3) The maximum dollar limit for the account for which assessments may be collected shall be \$1.5 million, excluding interest earnings and miscellaneous receipts.

(4) Each oil marketer shall pay monthly to the commission an amount equal to the assessment on the gross revenues derived from the retail sale of heating oil in Oregon.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0040

Heating Remedial Action Account Assessment

The commission shall by order establish the amount and the effective date of the Heating Oil Remedial Action Account Assessment:

(1) The assessment shall not exceed one and one-quarter percent of the gross revenues derived from the retail sale of heating oil in Oregon by oil marketers;

(2) The assessment shall not apply to any gross revenues derived before the effective date of the order;

(3) The maximum dollar limit for the account for which assessments may be collected shall be \$2.5 million, excluding interest earnings and miscellaneous receipts;

(4) Each oil marketer shall pay monthly to the commission an amount equal to the assessment on the gross revenues derived from the retail sale of heating oil in Oregon.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0041

Failure to Report

If any oil marketer fails or refuses to file any required report, the Commission may estimate the oil marketer's gross revenue and make a demand for the assessments due.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92

130-005-0042

Notice of Late Payment and Collections Policy

(1) Twenty calendar days after payment is due, the Commission will mail a notice of delinquent account and statement that payment is required.

(2) If payment is not received within 35 days of the payment due date, the Commission may refer the matter to the Attorney General's Office.

(3) If payment has not been received within fifteen days of the attorney general's request for payment, the Commission may

file a suit or action, in the name of the State of Oregon, for collection of the assessment and authorized penalties, fees and costs.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92

130-005-0050

Forms

Each oil marketer shall complete and submit to the commission the appropriate forms listed below. The forms shall be supplied by the commission. All information provided on the forms shall relate to the marketer's Oregon business for the calendar month preceding the month of submission unless the form specifies otherwise. The forms shall be prepared accurately and completely by the oil marketer:

(1) OHC Form OM-MS. "Monthly Statement of Gross Revenues" requires information monthly relating to the retail sale of heating oil in Oregon by oil marketers and gross revenues derived from those sales. Based on the gross revenue reported and the assessments ordered by the commission, the oil marketer shall calculate the amount due the commission.

(2) OHC Form OM-ES. "Certification of Excluded Sales" requires certification that the person derives no gross revenues from the retail sale of heating oil in Oregon and is not subject to the assessment.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0060

Submission Deadline

(1) Except as provided in OAR 130-005-0040, each oil marketer shall submit the completed OHC Form OM-MS required by OAR 130-005-0030 and payment of the assessments required by OAR 130-005-0020 and 130-005-0025 on or before the 20th calendar day of the month following the month of reporting.

(2) Except as provided in OAR 130-005-0040, the completed OHC Form OM-ES shall be submitted on or before the 20th calendar day of the month following the effective date of the commission's assessment order.

(3) Forms and payments subject to these rules shall be deemed submitted as of the date of receipt by the commission. Submissions shall be properly addressed and postage shall be prepaid. Each form shall be legible and complete.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0070

Extension or Revision of Submission Deadline

(1) Any oil marketer which finds it cannot meet the deadline set forth in OAR 130-005-0035 may apply to the commission for an extension of time or revision of the submission deadline. The application shall be by petition setting forth:

- (a) The reasons why the deadline cannot be met;
- (b) The measures being taken to comply with the deadline;

and

(c) The date on which the oil marketer intends to submit the required form and payment.

(2) A petition for an extension of time or revision of the deadline must be submitted no later than 15 days before the deadline from which an extension is sought.

(3) The commission may accept and consider petitions submitted less than 15 days before the deadline, if warranted by extenuating circumstances, but may in its sole discretion choose to waive or impose the penalty for late submission of required reports or payments.

(4) The commission may grant an extension of not more than 15 days if:

- (a) The petitioner makes a showing of hardship caused by the deadline;
- (b) The petitioner provides reasonable assurance that the revised deadline can be met; and

(c) The extension of time does not prevent the commission from fulfilling its statutory responsibilities.

(5) Within ten days of receipt of a petition, the commission shall either grant or deny the petition. If the commission fails to act within ten days, the petition shall be deemed denied.

(6) The commission chairman is delegated authority to approve or deny petitions if necessary to ensure timely response, in compliance with these provisions.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0080

Assessment Cancellation

(1) The commission, by order, may cancel an assessment which has been delinquent for five years or more if it determines that:

(a) The amount of the assessment is less than \$1 and that further collection effort or expense does not justify the collection thereof; or

(b) The assessment is wholly uncollectible.

(2) The order shall contain adequate information as to why the assessment cannot be collected.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0090

Confidentiality

ORS 192.500(1)(e) exempt from public disclosure the information reported under these rules pertaining to gross revenues to the extent that such information is in a form that would permit identification of an individual concern or enterprise, unless the public interest requires disclosure in the particular instance.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0100

Public Availability of Information

(1) Upon request, the commission shall make available commission records with regard to information submitted under these rules in accordance with ORS 192.410 through 192.500.

(2) The commission may charge fees to reimburse it for its actual cost in making such records available.

(3) If under the provisions of ORS 192.410 through 192.500, a request for records is denied, the commission shall notify the requestor, in writing, of the basis for the denial and of the requestor's right to appeal the denial to the Attorney General of the State of Oregon, as provided in ORS 192.450.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0110

Retention of Supporting Documentation

Each person required to complete forms prescribed under OAR 130-005-0030 shall keep for three years records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due the commission and of reports made or due the commission.

Stat. Auth.:

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90

130-005-0120

Penalties

(1) Except as provided under OAR 130-005-0040, any oil marketer who fails to pay the required assessments within 60 days of the time set by the Commission shall pay an additional fine equal to twice the amount of the assessment.

(2) Except as provided under OAR 130-005-0040, any per-

son who is ten calendar days late in paying the assessed fees shall pay five percent of the amount due then and one percent for each month of delay beyond the first month.

(3) If the oil marketer fails to make timely payment, the Commission may add the cost of collection to the penalty for non-payment or late payment.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1989(Temp), f. 12-12-89, cert. ef. 1-1-90; OH 3-1990, f. 2-26-90, cert. ef. 4-1-90; OH 1-1992, f. & cert. ef. 1-9-92

DIVISION 10

ADMINISTRATIVE PROCEDURES

130-010-0000

Authority and Purpose

(1) The purpose of these rules is to provide procedures for the orderly conduct of meetings of the Oil Heat Commission. These rules are adopted pursuant to ORS Chapter 183, ORS 183.330(1) and Section 39 of Oregon Laws 1989, Chapter 926.

(2) These rules supercede the temporary rules adopted January 18, 1990, and are effective March 20, 1990.

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91

130-010-0010

Quorum and Rules of Order

(1) Four members of the Commission constitute a quorum. The Commission may meet to discuss any matter in the absence of a quorum as provided by ORS 192.610 to 192.690 but may take no formal action on any matter unless a quorum is present.

(2) A majority of the Commission members present at a meeting must concur upon any action transacted by the Commission at such meeting. Any proposed Commission action must be moved by a Commission member and seconded by another Commission member before a vote may be taken by the Commission.

(3) Whenever a quorum is present, the members may not deliberate on or discuss any matter subject to review by the Commission without having first given public notice.

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91

130-010-0020

Officers

(1) Section 12, Oregon Laws 1989, Chapter 926 provides that the Commission shall annually elect a chair. The chair shall serve for one year or until a successor is elected. Members may serve successive full terms as chair. The chair may be removed by a unanimous vote of the other Commission members.

(2) The chair shall preside over all Commission meetings and shall determine the location of the Commission meetings.

(3) The Commission also shall have a vice chairperson. The vice chairperson shall be selected in the same manner as the chairperson and shall serve for the same period of time. The vice chairperson shall preside over Commission meetings when the chairperson is unavailable and otherwise assist the chairperson as needed.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0030

Meetings — Date and Location Notice

The Commission shall meet periodically, but at least once every six months and as determined by a majority of the Commission, at a time and place specified by the chair. The chair may call a special meeting to be held at any place in this State, upon 24 hours notice to each member and the public. The Commission will endeavor to vary the locations of its meetings to give persons

throughout the state an opportunity to observe and participate in its activities. The chair or his designee, consistent with the requirements of ORS 192.610 to 192.690, shall give notice of each meeting of the Commission. In the event of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours notice.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0040

Agendas for Regular Meetings

(1) The agenda for each regular meeting will be prepared by the administrator and shall set out all matters expected to come before the Commission at the meeting.

(2) The agenda may contain a "Consent Calendar" identifying items which are considered routine, such as minutes of previous meetings and personnel recognitions which will be acted upon without public discussion. However, if a Commission member objects to an item on the Consent Calendar, it will be removed from the Consent Calendar and placed on the regular agenda for discussion.

(3) Each agenda shall include a designated time period which has been reserved for the presentation of concerns by interested citizens who wish to address the Commission. The duration of this period will be established by the chair and may be lengthened or shortened at the Commission meeting by the chair as the length of the meeting, timing and duration of other Commission business dictate.

(4) The agenda shall identify the proponent of items placed thereon at the request of members of the public pursuant to these procedures.

(5) The agenda, together with minutes of all previous meetings which have not been approved by the Commission, will normally be sent to members at least one week prior to a regular meeting. The agenda will also be sent to each person or organization on the Oil Heat Commission's mailing list, which has requested a copy.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0050

Matters Not on Agenda

Commission members may with the approval of a majority of the members, raise matters at a meeting which were not placed on the agenda. A matter not on the agenda will not be acted upon unless a majority of the members present agree that the matter is of substantial immediate concern which should not be deferred until the next regular Commission meeting. The next Commission agenda will provide notification of such action.

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91

130-010-0060

Order of Business

(1) The order of business of Commission meetings shall be as follows:

(a) Introduction of new Commission members, resolutions for retiring Commission members, and other personnel recognition;

(b) Announcements;

(c) Minutes of previous Commission meetings. (Because the minutes previously will have been sent to the members, the reading of the minutes may be waived.) Corrections, additions and approval of minutes;

(d) Reports of standing and special committees;

(e) Consideration of agenda items.

(2) The chair, unless a majority of the Commission disagrees may revise the order of business, and may limit debate on any

item as necessary to conduct the meeting fairly and efficiently.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0070

Requests to Place Items on Agenda

Requests to place items on agendas for discussion only: Any person wishing to have an item placed on the agenda, including a suggested place of meeting, of a regular Commission meeting for purpose of discussion only shall give notice of the request in writing to the Oil Heat Commission at least two weeks prior to each meeting. The item will be placed on the agenda only with the concurrence of the chair.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0080

Requests for Commission Action

Any person wishing the Oil Heat Commission to take formal action with respect to a particular subject shall file such request, together with all supporting information, with the Oil Heat Commission at least 20 calendar days prior to the date of the regular Commission meeting at which action is proposed to be taken. The item will be placed on the agenda only with the concurrence of the chair. The foregoing does not apply to petitions requesting the Commission to initiate a rulemaking proceeding, or petitions requesting the Commission to issue a declaratory ruling, for which procedures are set forth in the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, as adopted by the Commission.

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0090

Working Groups

The chair may appoint such Working Groups as it deems necessary, subject to disapproval of a majority of the Commission. The chair may determine the number of members of such committees and select the individual members. Those committees may include such Commission members or other interested persons as the chair deems appropriate. The chair may with a majority approval of the Commission abolish committees at any time. The individuals on such committees need not act as a group nor reach a consensus but may report to the Commission individually.

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0096

Working Group Appointments

(1) It is the policy of the Oil Heat Commission that the committees and working groups established by the Commission shall be fairly representative of the industry.

(2) The chairperson of each working group shall be a Commissioner, who will be appointed by the Commission chairperson.

(3) Each working group chairperson shall be responsible for selecting individuals. Each working group member serves at the pleasure of the chairperson for so long as the chairperson determines it appropriate.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92

130-010-0097

Working Group Responsibilities

The working groups and committees provide recommendations and support to the Commission staff. They report to the Commission's administrator.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92

130-010-0100

Commission Files

All Commission files shall be assembled in the Commission's official office. The Commission's files shall be maintained under the direction of the administrator. The Commission shall maintain a record of the location of all files. Minutes of all Commission meetings shall be maintained in the Commission files for at least five years, and thereafter deposited in the State Archives.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0110

Commission Communications

Only the chair and/or the Administrator shall write other than routine or form letters in the name of the Commission unless members are specifically authorized in a Commission meeting to do so. All letters to be sent on behalf of the Commission should be prepared by Commission staff and copies appropriately filed and transmitted to the Commission. The Commission should approve in advance any correspondence which may materially affect policies and procedures. When a delay might render the Commission's functioning ineffective, the administrator may be required to take immediate action which shall be reviewed at the next meeting of the Commission.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0120

Commission Agreements

Unless another member is expressly authorized by the Commission, only the chair and/or the administrator may enter into agreements on behalf of the Commission. The chair and administrator may enter into such agreements as are necessary to carry out Commission policy and to enable the effective functioning of the Commission. Those agreements may include, but not be limited to working agreements with other governmental agencies as necessary to fulfill the statutory and administrative obligations of the Commission.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0130

Commission Expenditures

Unless another member is expressly authorized by the Commission, only the chair and/or administrator may incur financial obligations or authorize expenditures on behalf of the Commission. All such expenses shall be consistent with the legislatively approved budget and applicable state rules and regulations.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0140

Conflict of Interest

Because five of the seven Commission members are required by law to operate as oil marketers, there is a potential or conflict of interest or the appearance of such a conflict. Prior to each meeting the chair shall announce that potential conflict of interest. Individual Commission members shall also announce a potential conflict prior to consideration of or action on any agenda item which may result in benefit to that member distinct from the benefit to all oil marketers.

Stat. Auth.: ORS 469.248

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91; OH 1-1992, f. & cert. ef. 1-9-92

130-010-0150

Rules of Procedure

The Commission adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, June, 1988 edition. In any conflict between the Model Rules and specific Commission rules, the specific rules shall apply.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Oil Heat Commission.]

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91

130-010-0160

Waiver and Suspension

These rules are intended to provide guidance for orderly conduct of the commission's business. Inadvertent failure by the Commission to comply with these rules shall not invalidate any action. The Commission may also, by a majority of the quorum present, temporarily suspend these rules.

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91

130-010-0170

Amendments

These rules, or portions thereof, may be amended or repealed at any time by a vote of a majority of the members, and in compliance with the provisions of ORS Chapter 183 governing rulemaking activities.

Stat. Auth.:

Hist.: OH 2-1990(Temp), f. & cert. ef. 1-18-90; OH 1-1991, f. & cert. ef. 3-20-91

DIVISION 15

ENVIRONMENTAL PROTECTION PROGRAM

130-015-0000

Purpose

(1) The Oil Heat Commission, established by ORS 469.232, is charged with financing the costs of remedial action undertaken in compliance with standards and rules adopted by the Department of Environmental Quality for releases from qualified heating oil tanks.

(2) These rules describe the basis for that financial assistance.

(3) These rules supercede temporary rules adopted September 1, 1997 and are effective January October 1, 1997 or upon filing with the Secretary of State, whichever is later.

(4) The provisions of OAR 130-015-0000 to 130-015-0037, OAR 130-015-0200 to 130-015-0275, and OAR 130-015-0400 to 130-015-0420 apply to remedial action claims for which the Notice of Claim was received prior to July 1, 1997 and for which authorization to proceed was granted prior to the effective date of these rules.

(5) The provisions of OAR 130-015-0000 to 130-015-0037, OAR 130-015-0300 to 130-015-0330, and OAR 130-015-0400 to 130-015-0420 apply to remedial action claims for which the Notice of Claim was received on or after July 1, 1997 or for which authorization to proceed was granted on or after the effective date of these rules.

(6) Notwithstanding any other provision of these rules, the administrator shall not approve, provide written authorization to proceed, or otherwise accept Notices of Claims received on or after October 1, 1997 or the date this rule is filed with the Secretary of State, whichever is later, unless expressly authorized by the commission to do so.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; OHC 1-1997(Temp), f. & cert. ef. 9-2-97; OHC 2-1997(Temp), f. & cert. ef. 10-1-97

130-015-0010

Statutory Authority and Procedure

These rules are authorized by and carry out purposes of ORS 469.228 to 469.286 and were adopted pursuant to ORS 469.248 and 183.310 et seq.

Stat. Auth.:

Stats. Implemented:

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90

130-015-0020

Definitions

All terms in these rules have the same meaning as their common usage unless the rules state a different meaning. In addition, the following specific definitions shall apply:

(1) "Administrator" means the Administrator for the Oil Heat Commission.

(2) "Abandoned Tanks" means a heating oil tank which has been disconnected from a supply line, return line, or furnace, and is no longer in use to produce heat.

(3) "Assessments" means the moneys to be collected from oil marketers under ORS 469.254.

(4) "Building" means any oil heated building with human habitation, except a building owned by a government agency.

(5) "Commercial processing" means the process use of heat or water to produce or manufacture a product.

(6) "Commission" means the Oil Heat Commission established by ORS 469.232.

(7) "Complex site" means a site which requires remedial actions under rules other than OAR 340-122-0305 through 340-122-0360 and presents an imminent risk to public health and safety.

(8) "Department" means the Department of Environmental Quality.

(9) "Heating oil" means Number 1 or 2 heating oil that is delivered to a tank and used to create heat, excluding only the petroleum products that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530, or are otherwise used as transportation fuels.

(10) "Heating Oil Remedial Action Account" or "Account" means the account established by ORS 469.269.

(11)(a) "Heating oil tank" means any one or combination of above ground or underground tanks and above ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation or water heating not used for commercial processing.

(b) "Heating oil tank" does not include tanks that:

(A) Were abandoned when a release was discovered as reported to the Department of Environmental Quality;

(B) Are used to contain oil used for space or water heating for a government owned building;

(C) Are used to contain oil used predominantly for commercial processing; or,

(D) Have been abandoned then placed back into service without a soundness test to demonstrate there has been no prior release from the heating oil tank.

(12) "Human habitation" means commonly occupied by people.

(13) "Imminent risk" to public health and safety means that the heating oil release is in the immediate vicinity of and endangering drinking water supplies, is intruding or likely to intrude into structures used for human habitation, or is otherwise determined by the commission to present a clear and compelling need for exceptional financial assistance based on potential adverse public health and safety impacts.

(14) "Oil marketer" means a person who supplies heating oil at retail in this state.

(15) "Person" has the meaning given that term in ORS 174.100.

(16) "Reasonable cost" means the most cost-effective removal or remedial actions necessary to comply with these rules as determined by the commission. "Reasonable cost" does not include:

(a) Costs associated with restoring site improvements, including but not limited to patios, decks, sidewalks, concrete work, driveways, landscaping, shrubs, plants, or grasses.

(b) Costs paid by the property owner's insurance.

(c) Costs associated with review of removal or remedial actions by the department without prior written authorization from the administrator.

(d) Costs incurred without prior authorization from the administrator.

(e) Costs associated with removal of the tank, including initial removal of heating oil and water from the tank, cleaning and disposal of the tank, and removal and disposal of ground cover to expose the tank; or replacement of the tank, including replacement heating oil, installation of the interim or replacement tank, and fill and ground cover directly associated with the replacement tank.

(f) Costs to complete remedial actions which exceed the most cost-effective compliance with the rules of the department as authorized by the commission under OAR 130-015-0079.

(g) Costs associated with remedial actions necessary because of third-party negligence, including heating oil tank overflow, release of heating oil through disconnected or broken fuel lines, release of heating oil through damage to the heating oil tank, or other causes of release which could have been prevented through reasonable and prudent actions.

(h) Costs exceeding rates charged other nongovernmental entities or individuals; and

(i) Costs otherwise not eligible for reimbursement under these rules.

(16) "Release" means any spilling, leaking, emitting, escaping or leaching into the environment reported to the Department of Environmental Quality on or after August 2, 1989, the effective date of the enabling legislation.

(17) "Remedial Action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions, in the event of the release of heating oil from a heating oil tank into the environment, to prevent or minimize the release of heating oil from a heating oil tank so that it does not migrate to cause substantial danger to present or future public health, safety, welfare or the environment, but excluding such costs as may be associated with removal of the tank. "Remedial action" includes, but is not limited to:

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released heating oil from a heating oil tank and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, collection of leachate and runoff, onsite treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of heating oil released from a heating oil tank and associated contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release of heating oil from a heating oil tank in accordance with standards set forth in ORS 465.315 and rules adopted pursuant to ORS 465.400.

(d) "Remedial action" does not include replacement or installation of a new heating oil tank or the costs of removal and disposal of the tank, except as provided in OAR 130-020-0005 through 130-020-0025.

(18) "Remedial action costs" mean reasonable costs which are attributable to or associated with a removal or remedial action undertaken in accordance with the standards set forth in ORS 465.315 and rules adopted pursuant to ORS 465.400 and 469.248.

(19) "Removal" means:

(a) The cleanup or removal from the environment of heating oil released from a heating oil tank;

(b) Such actions as may be necessary in the event of a release of heating oil from a heating oil tank into the environment;

(c) Such actions as may be necessary to monitor, assess, evaluate the release of heating oil from a heating oil tank;

(d) The disposal of removed material; or

(f) The taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, which may otherwise result from a release of heating oil from a heating oil tank.

(f) "Removal" also includes, but is not limited to, security fencing or other measures to limit access, provisions of alternative drinking and household water supplies, temporary evacuations and housing of threatened individuals and action taken under ORS 465.260 relating to a release of heating oil from a heating oil tank.

(20) "Site Assessment" means the characterization of a site to determine the most cost-effective remedial actions necessary to comply with these rules.

(21) "Soundness Test" means a site-specific sampling and analysis plan adequate to determine if a release has occurred from a tank, lines or other related elements of a tank system. The plan shall be approved by the administrator prior to implementation.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 1-1992, f. & cert. ef. 1-9-92; OH 3-1992, f. & cert. ef. 6-26-92; OH 1-1993, f. & cert. ef. 7-28-93; OH 2-1993, f. & cert. ef. 9-14-93; OH 3-1993(Temp), f. & cert. ef. 9-14-93; OH 1-1994, f. & cert. ef. 1-20-94; OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Administrative Correction 11-29-97

130-015-0025

Remedial Action Account Reserves and Balances

(1) The administrator shall periodically determine the balances available to accept Notice of Claims and pay final claims.

(2) A Notice of Claim balance shall be calculated based on the sum of the estimated ending cash balance for the biennium plus the remaining expenditure authority allocated by the commission to pay claims less pending accepted claims less an operating reserve, which shall be based on the estimated operating costs (excluding claim payments) of the commission for 12 months.

(3) A final claim payment balance shall be calculated based on the lesser of the remaining expenditure authority allocated by the commission to pay claims, or the preceding month's estimated cash balance, less an operating reserve based on the estimated operating costs (excluding claim payments) of the commission for 12 months.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 3-1992, f. & cert. ef. 6-26-92; OHC 2-1995(Temp), f. & cert. ef. 3-31-95; OHC 3-1995, f. & cert. ef. 7-7-95; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0030; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0029

Eligibility Of Tanks For Cost Reimbursement

(1) The remedial action costs associated with a release from an abandoned tank, line, pipe, or tank system are not eligible for reimbursement.

(2) If an abandoned tank, line, pipe, or tank system is returned to service, a soundness test, as defined in OAR 130-015-0020, must be provided to the commission before the tank will be eligible for remedial action cost reimbursement for any releases that occur after the tank was returned to service.

(3) The property owner must agree in writing in such form as may be prescribed by the commission to retain oil heat as the primary heating source for one year following the date of commission payment of final cost reimbursement for the heating oil release cleanup.

(4) Any property owner who fails to retain oil heat as the primary heating source for one year shall repay to the commission the full amount of the cost reimbursement plus \$300 in administrative cost.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 3-1993(Temp), f. & cert. ef. 9-14-93; OH 1-1994, f. & cert. ef. 1-20-94; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0045;

OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0031**Transferability of Claims**

(1) Effective with initial Notice of Claims filed after January 1, 1997, the claims are not transferable to a new property owner.

(2) The new property owner may file a new Notice of Claim subject to all applicable terms and conditions governing new claims as of the date of the acceptance of the claim from the new property owner, except for timeliness requirements of the original Notice of Release and Notice of Claim, which if met by the original responsible property owner shall be deemed to have been satisfied by the new property owner. The new property owner must file a new Notice of Claim within 20 days of the date of change of ownership.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0035**Notice Of Release**

(1) The responsible property owner or the remedial action service provider on behalf of the responsible property owner shall give notice to the department within 24 hours of discovery that a release from a heating oil tank has occurred.

(2) The responsible property owner or the remedial action service provider shall give notice to the commission within 48 hours of discovery that a release from a heating oil tank may have occurred and that there is a potential claim.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0037**Priority Order Of Payment**

(1) Priority for reimbursement shall be based on the date of receipt of the accepted Notice of Claim up to the Notice of Claim balance as calculated in OAR 130-015-0025. Priority for costs added by revisions to the Notice of Claim or in the final claim shall be based on the date of receipt of an accepted cost revision, not to exceed the Notice of Claim balance.

(2) Notwithstanding the provisions of section (1), property owners signing an expedited/cost-share agreement shall be paid at such time as the final claim payment balance is sufficient to make payment, and prior to those claims which are not participating in the expedited/cost-share agreement. Expedited/cost-share claims shall be eligible for reimbursement based on the date of receipt of the cost-share agreement.

(3) Claims eligible for payment, except for those subject to the expedited/cost-share program, shall be paid up to the amount of the final claim payment balance and in the amount and order of the date of receipt of the accepted Notice of Claim and of any subsequent accepted revisions, up to the final claim payment balance. Claims eligible for payment which are subject to the expedited/cost-share program are eligible for reimbursement up to the amount of the final claim payment balance, and in the amount and order of date of receipt of the cost-share participation agreement.

(4) Notwithstanding the provisions of sections (1), (2) and (3), the administrator may assign a higher priority for reimbursement of a claim or categories of claims if the administrator determines that such action would be cost advantageous to the commission.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0089

130-015-0200**Initial Site Assessment and Response**

(1) The administrator may authorize in writing qualified

remedial action service providers to complete initial site assessment and response actions at all sites where there has been a release subject to such limitations as the administrator may impose.

(2) The initial site assessment may include such actions as are necessary and authorized under section (1) to characterize further remedial action requirements.

(3) The initial assessment and response actions shall not exceed a cost of \$2,500, unless warranted by site specific conditions and approved by the administrator or designee, and exclude costs associated with tank removal or replacement as defined in OAR 130-015-00200 (14)(e).

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0041

130-015-0205**Initial Notice Of Claim**

(1) Any person liable for the cleanup of a release under ORS 465.255, when incurring remedial action costs, shall give written Notice of Claim to the commission within 20 days of the date the release was discovered.

(2) The notice shall be filed in such form as may be required by the commission and shall include, but not be limited to:

(a) A remedial action proposal, including estimated costs and the basis for those estimates.

(b) Certification by the property owner as to the eligible use of the property as defined in OAR 130-015-0020 and 130-015-0095.

(c) Certification by the property owner as to the eligibility of the heating oil tank as defined in OAR 130-015-0020 and 130-015-0029.

(d) Certification by the property owner as to agreement to use oil heat as the primary heat source, consistent with the provisions of OAR 130-015-0029.

(3) If the estimated remedial action costs in the Notice of Claim exceed \$10,000, the administrator may require the property owner to receive and submit up to three written proposals with cost estimates from qualified remedial action service providers to complete remedial actions consistent with the commission's rules, before accepting the Notice of Claim.

(4) With the Notice of Claim, the property owners shall include evidence of filing a claim with their homeowner insurance company and a copy of the insurance policy, and shall assign any cause of action related to such claim to the commission on a form acceptable to the commission, if such form is available.

(5) In filing the Notice of Claim, the property owner must elect to use:

(a) The standard Notice of Claim and reimbursement method;

(b) The expedited/cost-share Notice of Claim and reimbursement method; or

(c) The application for future funding method.

(6) If the initial site assessment has not been completed, the remedial action proposal shall provide a schedule of intended site assessment actions and associated costs.

(7) If the initial site assessment has been completed, the Notice of Claim shall report the results of that assessment and propose a specific remedial action plan, schedule and estimated costs.

(8) With the Notice of Claim proposing a specific remedial action plan, the property owner shall state whether the remedial actions will be completed under the Soil Matrix Rules specified in OAR 340-122-0205 through 340-122-0360 or through a proposed alternative method under the department's rules.

(9) The property owner shall further certify understanding and acceptance of the cost reimbursement limitations imposed by the commission on remedial actions completed under the Soil Matrix Rules by signing the agreement to those limitations on the Notice of Claim form.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0049

130-015-0210

Revised Notice Of Claim

(1) Any person who has filed a Notice of Claim with the commission shall submit a revised Notice of Claim documenting any change from the information provided in the prior Notice of Claim.

(2) A revised Notice of Claim shall be filed upon completion of the initial site assessment to report the results of that assessment and to propose a specific remedial action plan, if such information was not provided in the initial Notice of Claim.

(3) With the Notice of Claim proposing a specific remedial action plan, the property owner shall state whether the remedial actions will be completed under the Soil Matrix Rules specified in OAR 340-122-0205 through 340-122-0360 or through a proposed alternative method under the department's rules. The property owner shall further certify understanding and acceptance of the cost reimbursement limitations imposed by the commission on remedial actions completed under the Soil Matrix Rules by signing the agreement to those limitations on the Notice of Claim form.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0055

130-015-0215

Standard Claim

(1) Unless the person filing the Notice of Claim elects to use either the Expedited/Cost Share or Request for Future Funding methods of reimbursement, the claim shall follow the standard process for reimbursement of costs incurred as prescribed by these rules.

(2) The person filing the Initial Notice of Claim for the standard method of reimbursement may submit a revised Notice of Claim to use either the Expedited/Cost Share or Request for Future Funding methods of reimbursement.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0059

130-015-0220

Expedited/Cost-Share

(1) Property owners shall have the option of participating in an expedited/cost-share program. If the property owner signs an expedited/cost-share agreement, the commission shall be financially responsible for only the first \$3,000 of actual, eligible remedial action costs of the approved Notice of Claim, in accordance with all other provisions of these rules. In lieu of the \$3,000 payment, commission may offer other alternate financial incentives. The property owner shall be financially responsible for all remaining costs and loan payments. If costs eligible for commission reimbursement in an approved Notice of Claim for an expedited/cost-share program cleanup exceed \$10,000, the commission will reimburse the property owner for approved remedial action costs exceeding \$10,000.

(2) For property owners participating in the expedited/cost-share Notice of Claim, all remaining elements of the commission Environmental Protection program, OAR 130, Division 15, must be followed.

(3) Property owners who filed Notice of Claim prior to the effective date of these rules shall have 45 days from receipt of a letter from the commission stating that they are eligible to enroll in the expedited/cost-share portion of the program to sign the agreement and return it to the commission.

(4) The person filing the Initial Notice of Claim for the Expedited/Cost Share method of reimbursement may submit a revised Notice of Claim within seven days of filing the Initial Notice of Claim to use either the standard or Request for Future Funding

methods of reimbursement.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0065

130-015-0225

Request For Future Funding

(1) A property owner who has complied with all other provisions of these rules and decides to proceed with a cleanup prior to receiving authorization to proceed shall first submit an application to the commission for future funding approval, on such form as may be approved and provided by the commission. The form will include a section for the administrator to authorize the property owner to proceed with future funding.

(2) The property owner shall be liable for paying all costs incurred by the remedial action service provider and will be reimbursed by the commission only when funds are available.

(3) Only those charges which are reasonable under the commission's rules will be reimbursed, and any charges incurred which the commission concludes are not reasonable will be the property owner's responsibility.

(4) The commission will release funds only when it has received all information necessary to determine compliance with the commission's rules and to issue a record of environmental cleanup.

(5) If the administrator has approved the application for future funding, the administrator may authorize reimbursement not to exceed \$3,000 or eligible actual, reasonable and necessary costs, whichever is less.

(6) This process does not change the priority order for payment of the claim.

(7) Remedial actions completed under these provisions shall meet all other rules and standards of the commission.

(8) The person filing the application for the Request for Future Funding method of reimbursement may submit a revised Notice of Claim within seven days of filing the application to use either the standard or Expedited/Cost Share methods of reimbursement.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0069

130-015-0230

Initial Determination Of Eligibility

(1) Except as provided in the provisions for Initial Assessment and Response, within five working days of receiving a complete Notice of Claim, the administrator shall notify the responsible property owner in writing whether the claim is eligible for cost reimbursement or has been denied in whole or in part.

(2) A Notice of Claim will not be considered complete unless all required information is provided, and the administrator may not accept a claim as complete unless the administrator concludes that the proposed remedial action and costs meet the commission's requirements for cost reimbursement.

(3) If the Notice of Claim balance as calculated in OAR 130-015-0025 is insufficient to cover the claim and to issue an authorization to proceed with the remedial actions, the notification shall state that the property owner is responsible for all costs incurred and may be eligible for reimbursement only when the final claim payment balance is sufficient to make payment.

(4) Until administrator approval, rejection or modification of the written Notice of Claim, eligible remedial action costs are limited to those authorized under the provisions for Initial Assessment and Response. The Notice of Claim approved by the administrator shall be for the specific actions and specific dollar limit for work to be completed at an eligible site, unless modified in writing by the administrator.

(5) The administrator shall approve only those Notices of Claims that include the most cost-effective method of meeting the

requirements contained in these rules.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0072

130-015-0235

Authorization To Proceed

(1) When the administrator determines that the Notice of Claim balance as calculated in OAR 130-015-0025 is sufficient to cover the claim, the administrator shall provide the property owner and the remedial action service provider with written authorization to proceed with the approved remedial actions, based on the accepted Notice of Claim.

(2) Such authorization shall be contingent upon receiving within 20 days of the date of written authorization, a remedial action schedule, including estimated billing amounts on a schedule of two-month periods beginning with January of the respective calendar year.

(3) The authorization to proceed shall be rescinded if:

(a) The remedial action schedule is not received within 20 days; or

(b) Work is not completed within 120 days of the authorization or consistent with an alternate schedule filed by the property owner or remedial action service provider and approved by the administrator in writing, before the initial 120 day period or the period provided in an approved alternate schedule has elapsed.

(4) If the authorization to proceed is rescinded under the provisions of section (3) of this rule, a person incurring costs for remedial action may submit a new Notice of Claim, which will be subject to all applicable provisions of these rules.

(5) If additional costs are anticipated, a revised Notice of Claim shall be filed.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0079

130-015-0240

Cost Reimbursement Limitation

(1) The amount of cost reimbursement shall be limited by the following percentage of the approved Notice of Claim:

(a) Single Family Dwelling: 100 percent.

(b) Commercial, Non Profit: 50 percent.

(2) The designated use of the property shall be based on the use with the lowest eligible percentage of reimbursement during the period beginning with the date the release was discovered and ending with final payment by the commission.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.286

Hist.: OH 3-1993(Temp), f. & cert. ef. 9-14-93; OH 1-1994, f. & cert. ef. 1-20-94; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0046; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0095

130-015-0245

Remedial Action Progress Review

(1) The administrator or designee shall review claims in process to determine whether the remedial actions are consistent with the requirements contained in these rules.

(2) The property owner shall provide the administrator or designee with information on request and reasonable access to inspect the site as may be necessary for this review and determination.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 3-1992, f. & cert. ef. 6-26-92; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0070; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0105

130-015-0250

Reasonable Cost Standards

(1) Only those costs which are not paid by the property

owner's insurance shall be eligible for cost reimbursement.

(2) Remedial action service providers shall not receive reimbursement for costs exceeding those set forth in **Table 1** unless the administrator has given written authorization. The administrator may grant specific exceptions for any specific Notice of Claim if warranted based on extenuating circumstance documented by the remedial action service provider.

(3) Property owners and remedial action service providers shall not receive reimbursement for costs exceeding those reasonably required to cost-effectively meet the department's standards as authorized by the commission.

(4) Remedial action service providers are prohibited from directly or indirectly charging either the commission or the responsible property owner for any remedial action costs in addition to those included in the Notice of Claim or revised Notice of Claim, unless the property owner has agreed in writing to pay such costs.

(5) The property owner may elect to perform site remediation under the department's Soil Matrix Cleanup Rules specified in OAR 340-122-0205 through 340-122-0360 or through an alternative method complying with the department's rules. If the property owner elects to complete the remedial actions under the department's Soil Matrix Rules, the commission will pay a maximum of \$3,000 of cost-effective cleanup costs associated with the cleanup of the property, not to exceed eligible, reasonable and necessary actual costs, unless the administrator expressly authorizes additional reimbursement as a more cost-effective than an alternative method allowed by the department's rules. The payment is subject to all commission rules concerning reasonable and cost-effective cleanups.

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 3-1992, f. & cert. ef. 6-26-92; OHC 2-1994, f. & cert. ef. 3-14-94; OHC 1-1995, f. & cert. ef. 1-4-95; OHC 2-1995(Temp), f. & cert. ef. 3-31-95; OHC 3-1995, f. & cert. ef. 7-7-95; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0060; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0109

130-015-0255

Record Of Environmental Cleanup

(1) When the administrator or designee conclude that no additional remedial actions are necessary to comply commission's rules, the commission shall issue a record of environmental cleanup to the property owner indicating that the remedial actions eligible for cost reimbursement by the commission are complete. A copy of the record shall be sent to the Remedial Action Service Provider and the department.

(2) Should new information cause the commission to conclude that additional remedial actions are necessary at the site, the commission will rescind the record of environmental cleanup and provide guidance on actions which must be completed before a new record of environmental cleanup will be issued.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1995, f. & cert. ef. 1-4-95; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0075; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0115

130-015-0260

Progress Payments

(1) The commission may make progress payments on qualified, accepted claims where the remedial actions are limited to soil or on sites which have affected groundwater and where a Corrective Action Plan is required under OAR 340-122-0250:

(a) The written request to the commission for progress payments shall be filed with a Notice of Claim.

(b) The request for progress payment shall not exceed actual costs incurred for services provided.

(c) The request for progress payment shall not exceed the eli-

gible percentage of the claim for cost reimbursement.

(d) Invoices may be filed with the commission for the progress payments, not to exceed actual costs incurred, for up to 100 percent of actual receipted costs and 90 percent of the balance of the total accepted eligible percentage of the Notice of Claim, consistent with the accepted remedial action plan and schedule. The invoices shall include documentation of the actual costs incurred.

(2) For progress payments for sites affecting groundwater where a Corrective Action Plan is required under OAR 340-122-0250, the administrator may make progress payments on accepted claims for which the remedial actions will not be completed within 60 days of receipt of the Notice of Claim by the commission and where a Corrective Action Plan is required under OAR 340-122-0250. In addition:

(a) The written request to the commission for progress payments shall be filed with a Corrective Action Plan, which shall include a schedule of proposed remedial actions and payments.

(b) The Corrective Action Plan shall be submitted to the department for approval.

(c) Within 30 days of receipt of notice of approval of the plan by the department, the administrator shall either adopt, modify or reject the proposed progress payment schedule.

(d) Invoices may be filed with the commission for the progress payments, not to exceed actual costs incurred, for up to 100 percent of actual receipted costs and 90 percent of the balance of the total eligible percentage of the Notice of Claim, consistent with the accepted Corrective Action Plan and schedule. The invoices shall include documentation of the actual costs incurred.

(e) If the remedial action plan has been approved in writing by the department and both the plan and the proposed payment schedule have been accepted by the administrator, the commission may pay the invoices within 30 days of receipt, subject to the provisions of the Remedial Action Account Reserves and Balances listed in OAR 130-015-0025.

(3) For progress payments at a site where the Remedial Action Services Provider has been changed, the commission may pay the original Service Provider 100 percent of actual receipted costs and 90 percent of the balance of the total accepted Notice of Claim amount for remedial actions completed, consistent with the necessary required remedial actions remaining at the site. The final ten percent billing would be included in the first progress payment of the new contractor. Invoices shall include documentation of the actual costs incurred.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 3-1992, f. & cert. ef. 6-26-92; OH 1-1993, f. & cert. ef. 7-28-93; OH 2-1993, f. & cert. ef. 9-14-93; OH 3-1993(Temp), f. & cert. ef. 9-14-93; OH 1-1994, f. & cert. ef. 1-20-94; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0100; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0129

130-015-0265

Claims For Final Payment

(1) A completed claim for final payment must be filed with the commission within 90 days after the remedial actions are completed. If the claim for final payment is incomplete, the administrator may request information needed to make the claim complete.

(2) To be deemed complete, a claim for final payment shall provide all information necessary for the administrator to determine that the remedial action complies with the commission's rules. Such information shall include, but not be limited to, the following:

(a) Representative photographic documentation of the site before, during and after the remedial actions;

(b) Written proof of the remedial action costs, filed in such form as may be required by the commission and to the extent practical in such form and including such information as necessary to comply with the department's reporting requirements; and

(c) Copies of invoices detailing time and materials costs, including invoices documenting the separate billing of costs and

the actions covered by tank replacement programs.

(3) Claims that are obviously incomplete or that do not contain the required information will not be accepted and shall be returned for completion. If the administrator determines that additional information is necessary before making a completeness determination, it may request such information in writing and set a reasonable deadline for a response. The claim will not be considered completed until adequate information is received. If the additional information is not provided by the deadline specified, the claim shall be determined to be incomplete, and the claim shall be denied. When the information in the claim is deemed adequate, the administrator will process the claim.

(4) Within 60 days of receiving a complete claim for final payment, the administrator shall determine whether the claim shall be paid, in full or in part, or rejected. The administrator may extend this time by up to 30 days by giving written notice of the extension to the claimant.

(5) No person shall willfully conceal or misrepresent any material fact or circumstances concerning claim for or proof of the remedial action costs incurred.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 3-1993(Temp), f. & cert. ef. 9-14-93; OH 1-1994, f. & cert. ef. 1-20-94; OCH 1-1995, f. & cert. ef. 1-4-95; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0080; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0135

130-015-0270

Qualified Remedial Action Service Providers

(1) Eligibility for reimbursement of remedial action costs incurred by a person providing the service for a fee shall be limited to persons who have:

(a) Filed with the commission written certification to comply with the commission's Reasonable Cost Standards adopted under OAR 130-015-0109. Such certification shall also apply to billings for subcontractors used for the commission financed remedial actions.

(b) Filed with the commission current and adequate certificates of all insurance, including workers compensation and liability, which show the limits of liability for all coverages. A minimum of \$1,000,000 in general liability insurance must be maintained;

(c) Been and are licensed by the Department of Environmental Quality as qualified to perform remedial actions, under OAR 340, Division 162 or 163.

(d) Filed with the commission documentation as required by the commission that the person has the necessary skills, experience and training to meet the Tier I, II, or III provider qualifications.

(e) Completed the commission's remedial action training seminar.

(f) Filed with the commission annually a compiled financial statement for the company.

(2) To qualify as a Tier I Service Provider, a person shall demonstrate his/her knowledge of the environmental regulations which govern petroleum release remediation and its experience in meeting cleanup requirements in a cost-effective manner.

(3) To qualify as a Tier II Service Provider, a person shall demonstrate his/her knowledge of the environmental regulations which govern petroleum release remediation, its experience in meeting cleanup requirements in a cost-effective manner, and its ability to accurately predict the movement of petroleum products underground through complex site geology.

(4) To qualify as a Tier III Service Provider, a person shall demonstrate his/her knowledge of the environmental regulations which govern petroleum remediation, its experience in meeting cleanup requirements in a cost-effective manner, its ability to accurately predict the movement of petroleum products underground through complex site geology, and its ability to assess and remediate groundwater contamination in a cost-effective manner.

(5) Within 60 days of the effective date of these rules, the commission shall establish and may periodically revise a list of

persons who have met these eligibility requirements.

(6)(a) In addition to other penalties prescribed by law, the commission may exclude from such lists of qualified persons:

(A) Any person who has concealed, omitted, or misrepresented any material fact or circumstance concerning a claim for or proof of remedial action costs including providing false information regarding charges to be paid on a remedial action or altering receipts or records such that items which would normally not be eligible for reimbursement appear to fall within the commission's Reasonable Cost Standards or equivalents adopted under OAR 130-015-0109;

(B) Any person who has misrepresented compliance with the commission's standards for reimbursement;

(C) Any person who provides false information regarding the commission's Environmental Protection Program or the department's cleanup requirements to an oil heat customer eligible for cleanup claims under this program;

(D) Any person who demonstrates a material lack of knowledge regarding the cleanup requirements of the department or a material lack of knowledge regarding standard practices in proper remedial actions to be undertaken when petroleum product releases have occurred;

(E) Any person who undertakes other actions the commission finds to be detrimental to the Environmental Protection Program.

(b) The exclusion shall remain in effect until restitution has been made, if ordered by the commission, and the person has demonstrated to the commission by sworn affidavit or equal proof that adequate corrective actions have been taken or that appropriate procedures have been instituted to prevent recurrence;

(c) Any person excluded shall be notified in writing of the commission's action and shall have 30 days to request in writing a hearing before the commission, except that such a request shall not stay the commission's action.

(d) Within 60 days of receipt of a written request for a hearing, the commission shall hold a contested case hearing as provided by ORS Chapter 183 and enter a final order vacating, modifying, or affirming the action.

(7) The Remedial Action Service Provider for a commission eligible project shall be qualified by this section.

(8) Once such a list has been established, only remedial actions provided by qualified persons on the list shall be eligible for cost reimbursement through the remedial action account.

(9) Notwithstanding section (8) of this rule, the commission in its discretion may make reimbursements to persons not on the list, if warranted by exceptional circumstances.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 3-1992, f. & cert. ef. 6-26-92; OH 1-1993, f. & cert. ef. 7-28-93; OH 2-1993, f. & cert. ef. 9-14-93; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0110; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0139

130-015-0275

Contracted Remedial Action Service Providers

(1) If following periodic review of claims payments, the commission concludes that it may be more cost-effective to competitively bid price agreements for remedial action services, it may do so.

(2) The commission may select from the list of otherwise qualified service providers, through the competitive bidding process, those who offer the most cost advantageous terms and conditions or are willing and able to provide the services within price guidelines established in the solicitation.

(3) The commission shall maintain a list, which shall supersede previously established lists, of remedial action service providers selected, qualified and eligible to receive reimbursement of remedial action costs.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0120; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0145

130-015-0300

Initial Notice Of Claim

(1) Any person liable for the cleanup of a release under ORS 465.255, when incurring remedial action costs, shall give written Notice of Claim to the commission within 20 days of the date the release was discovered.

(2) The notice shall be filed in such form as may be required by the commission and shall include, but not be limited to:

(a) A remedial action proposal, including estimated costs and the basis for those estimates.

(b) Certification by the property owner as to the eligible use of the property as defined in OAR 130-015-0020 and 130-015-0320.

(c) Certification by the property owner as to the eligibility of the heating oil tank as defined in OAR 130-015-0020 and 130-015-0029.

(d) Certification by the property owner as to agreement to use oil heat as the primary heat source, consistent with the provisions of OAR 130-015-0029.

(e) Certification by the property owner that the property owner has signed a cost-recovery agreement with the department, unless the commission has waived this certification requirement because the commission is completing its own environmental compliance review under the provisions of OAR 130-015-0330 (2)(e).

(3) If the claim is eligible for cost reimbursement in excess of \$10,000, the administrator may require the property owner to receive and submit up to three written proposals with cost estimates from remedial action service providers to complete remedial actions consistent with the commission's rules, before accepting the Notice of Claim.

(4) With the Notice of Claim, the property owners shall state whether they have insurance which may cover all or part of the claim and certify as to their understanding and agreement that the reimbursement from the commission shall be exclusive of costs reimbursable by their insurance coverage.

(5) If sufficient information is not available to fully describe necessary remedial action services and costs, the remedial action proposal shall provide a schedule of actions needed to complete that analysis.

(6) If the analysis has been completed, the Notice of Claim shall report the results and include the proposed remedial action plan, schedule and estimated costs.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0305

Revised Notice Of Claim

(1) Any person who has filed a Notice of Claim with the commission shall submit a revised Notice of Claim documenting any change from the information provided in the prior Notice of Claim.

(2) A revised Notice of Claim shall be filed upon completion of any pending analysis necessary to propose a specific remedial action plan, if such information was not provided in the initial Notice of Claim.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0310

Initial Determination Of Eligibility

(1) Within five working days of receiving a complete Notice of Claim, the administrator shall notify the responsible property owner in writing whether the claim is eligible for cost reimbursement or has been denied in whole or in part.

(2) A Notice of Claim will not be considered complete unless all required information is provided, and the administrator may not accept a claim as complete unless the administrator concludes that the proposed remedial action and costs meet the commission's requirements for cost reimbursement.

(3) If the Notice of Claim balance as calculated in OAR 130-015-0025 is insufficient to cover the claim and to issue payment authorization, the notification shall state that the property owner is responsible for all costs incurred and may be eligible for reimbursement only when the final claim payment balance is sufficient to make payment.

(4) Remedial action costs incurred prior to acceptance of the Notice of Claim in writing by the administrator are eligible for cost reimbursement by the commission if such costs are included in the accepted Notice of Claim, subject to the cost reimbursement limitations in effect for such claims when final payment authorization is granted.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0320

Cost Reimbursement Limitation

(1) Effective July 1, 1997 and annually thereafter or at such other times as the commission deems necessary to maintain prudent final claim balances, the commission shall set the maximum amount or percentage of cost reimbursement for claims, with the payment to be the lesser of that amount or actual costs incurred.

(2) The commission may allocate grant financing for special needs. Notwithstanding the provisions of section (1), the commission may set the maximum amount or percentage of cost reimbursement for such claims at up to the full amount of the final claim, not to exceed actual costs incurred, with the total annual payment of all such claims not to exceed the total amount allocated by the commission.

(3) In setting such limitations, the commission shall determine whether the limitations shall apply only to new claims filed after the effective date of the limitation or to all claims pending final payment authorization as of the effective date of the limitation.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97

130-015-0325

Payment Authorization

(1) When the administrator determines that the Final Claim Payment balance as calculated in OAR 130-015-0025 is sufficient to cover the claim, the administrator shall provide the property owner and the remedial action service provider with written authorization of eligibility for payment.

(2) Such authorization shall be contingent upon receiving within 20 days of the date of written authorization a remedial action schedule, including estimated billing amount on a schedule of two-month periods beginning with January of the respective calendar year.

(3) The authorization shall be rescinded if:

(a) The remedial action schedule is not received within 20 days; or

(b) Work is not completed within 180 days of the authorization or consistent with an alternate schedule filed by the property owner or remedial action service provider and approved by the administrator in writing before the initial 180 day period or the period provided in the approved alternate schedule has elapsed.

(4) If the authorization is rescinded under the provisions of section (3) of this rule, a person incurring costs for remedial action may submit a new Notice of Claim subject to all applicable terms and conditions governing new claims as of the date of the acceptance of the new claim, except for the timeliness requirements of the original Notice of Release and Notice of Claim, which if met by original claim shall be deemed to have been satisfied.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; OHC 2-1997(Temp), f. & cert. ef. 10-1-97

130-015-0330

Claims For Final Payment

(1) A completed claim for final payment must be filed with the commission within 90 days after the remedial actions are completed or at such earlier time as the costs incurred are equal to or greater than the amount of cost reimbursement offered by the commission. If the claim for final payment is incomplete, the administrator may request information needed to make the claim complete.

(2) To be deemed complete, a claim for final payment shall provide all information necessary for the administrator to determine that the remedial action complies with the commission's rules. Such information shall include, but not be limited to, the following:

(a) Representative photographic documentation of the site before, during and after the remedial actions;

(b) Written proof of the remedial action costs, filed in such form as may be required by the commission and to the extent practical in such form and including such information as necessary to comply with the department's reporting requirements; and

(c) Copies of invoices detailing time and materials costs, including invoices documenting the separate billing of costs and the actions covered by tank replacement programs.

(d) A copy of the final and complete financial statement of settlement from any applicable insurance if available at the time the final claim is filed. If the final and complete financial statement of settlement from any applicable insurance is not then available, such statement shall be filed with the commission within 30 days of subsequent receipt by the property owner. If the settlement reduces actual costs to the property owner to an amount less than reimbursed by the commission, the property owner shall also repay the difference to the commission within 30 days of receipt of the settlement.

(e) A copy of a letter from the department stating that no further action is required at the site if available. If the department cannot complete or has not completed its review in a timely manner, the commission may complete its own review to determine whether the actions meet or are consistent with the requirements of these rules.

(3) Claims that are obviously incomplete or that do not contain the required information will not be accepted and shall be returned for completion. If the administrator determines that additional information is necessary before making a completeness determination, the administrator may request such information in writing and set a reasonable deadline for a response. The claim will not be considered completed until adequate information is received. If the additional information is not provided by the deadline specified, the claim shall be determined to be incomplete, and the claim shall be denied. When the information in the claim is deemed adequate, the administrator will process the claim.

(4) Within 60 days of receiving a complete claim for final payment, the administrator shall determine whether the claim shall be paid, in full or in part, or rejected, subject to the cost reimbursement limitations. The administrator may extend this time by up to 30 days by giving written notice of the extension to the claimant.

(5) No person shall willfully conceal or misrepresent any material fact or circumstances concerning claim for or proof of the remedial action costs incurred.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; OHC 2-1997(Temp), f. & cert. ef. 10-1-97

130-015-0400

Denial of Claims

(1) Failure of the property owner or the remedial action service provider to comply with the provisions of OAR 130-015-0029, 130-015-0049(1), (2) or (3), 130-015-0105 shall result in denial of the claim by the administrator.

(2) Failure of the property owner or the remedial action ser-

vice provider to comply with any other provisions of these rules shall be cause for the administrator to deny the claim, unless an exception is warranted by extenuating circumstances presented in writing by the property owner.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OHC 4-1995, f. & cert. ef. 9-29-95; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0149

130-015-0405

Appeal

(1)(a) Any person whose claim has been denied or who has received less than the full amount of the eligible percentage of the claim for reasons other than insufficient account balances, as provided in OAR 130-015-0025, may seek up to the full amount of the claim by filing a demand for a hearing with the commission.

(b) The demand shall identify the name and address of the claimant, the date proof of the remedial action costs was filed, and the date of the determination by the administrator paying the claim in part or rejecting the claim.

(2)(a) The demand for a hearing must be filed within 30 days of the administrator's determination paying the claim in part or rejecting the claim.

(b) If a timely demand for a hearing is filed, the matter shall be placed on the regular agenda for commission review at the next regularly scheduled commission meeting.

(c) If the commission and the person reach an agreement on the claim denial or the amount of the payment, the agreement shall be entered in the meeting record, and the property owner shall withdraw the demand for hearing.

(d) If the commission and the person are unable to reach an agreement, the commission shall hold a contested case hearing as provided by ORS 183.310 to 183.550 and in accordance with the Attorney General's Model Rules of Procedure, OAR 137-003-0001 through 137-004-0010.

(3) In the absence of a timely demand for a hearing, no person shall be entitled to judicial review of the determination.

(4) After the hearing, the commission shall enter a final order vacating, modifying or affirming the administrator's determination.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.280 - ORS 469.282

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 1-1994, f. & cert. ef. 1-20-94; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0090; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0155

130-015-0410

Delegation of Authority

(1) The commission may by order delegate such authority to the chairperson as the commission deems appropriate to ensure timely action in the review and determinations of eligibility of claims and of approval of payment of pending claims.

(2) All actions taken under this delegation shall be reported to the commission at the next regularly scheduled meeting.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0130; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0160

130-015-0415

Public Availability of Information

(1) Upon request, the commission shall make available commission records with regard to information submitted under these rules in accordance with ORS 192.410 through 192.500.

(2) The commission may charge fees to reimburse it for its actual cost in making such records available.

(3) If under the provisions of ORS 192.410 through 192.500, a request for records is denied, the commission shall notify the requestor, in writing, of the basis for the denial and of the requestor's right to appeal the denial to the Attorney General of the State of Oregon, as provided in ORS 192.450.

Stat. Auth.: ORS 469.248

Stats. Implemented: ORS 469.228 - ORS 469.286

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0140 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0130; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0165

130-015-0420

Retention of Supporting Documentation

(1) Each person required to complete forms prescribed under these rules shall keep for three years records sufficient to enable the commission to determine by inspection and audit the accuracy of claims made of the commission and whether such claims comply with the rules of the commission.

(2) For remedial action service providers, such documentation shall include records sufficient to determine actual costs and confirm billings for each claim, including but not limited to time and equipment logs, billing methodology (direct labor costs, fringe and benefit costs, general administrative costs, direct costs and fees).

Stat. Auth.: ORS 469.248

Stats. Implemented:

Hist.: OH 5-1990, f. 9-25-90, cert. ef. 10-1-90; OH 3-1992, f. & cert. ef. 6-26-92; OHC 4-1995, f. & cert. ef. 9-29-95; Renumbered from 130-015-0150; OHC 1-1996, f. 12-26-96, cert. ef. 1-1-97; Renumbered from 130-015-0170

DIVISION 20

TANK INCENTIVE PROGRAM

130-020-0005

Authority and Purpose

(1) HB 2178 authorizes the Commission to reimburse some of the costs of upgrading certain heating oil tanks that are used to replace a tank that has caused a release. These rules are authorized by ORS 469.248 and adopted pursuant to ORS Chapter 183.

(2) These rules describe the basis for the Commission to determine when tank costs may be reimbursed and how much may be authorized for tank incentives.

(3) These rules are effective upon filing with the Secretary of State.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92; OH 2-1992(Temp), f. & cert. ef. 5-4-92; OH 3-1992, f. & cert. ef. 6-26-92

130-020-0010

Definitions

(1) All terms in these rules have the same meaning as their common usage or as the definitions contained in ORS 469.228 to 469.286 and OAR 130-015-0020, the Commission's Environmental Protection Program, unless the rules state a different meaning.

(2) "State Median Income Level" will be determined by the Commission.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92

130-020-0015

Program Funding

The tank incentive program shall be funded through the Heating Oil Remedial Action Account created pursuant to ORS 469.269.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92; OH 2-1992(Temp), f. & cert. ef. 5-4-92; OH 3-1992, f. & cert. ef. 6-26-92

130-020-0020

Eligibility

(1) For a tank to be eligible for this program, it must meet the following specifications:

(a) The tank must be .10 or .12 gauge;

(b) Other tanks that are equivalent to or better than the specifications in this subsection are acceptable to the Commission if the Commission specifically approves the installation of such tank in advance.

(2) This program applies only to the costs of attaching one or two 20# anodes and does not include the costs of tank or tank installation.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92; OH 2-1992(Temp), f. & cert. ef. 5-4-92; OH 3-1992, f. & cert. ef. 6-26-92

130-020-0025

Process for Payment

(1) The person responsible for the remedial action shall submit a request from the Commission for reimbursement of not more than \$125 of the cost of one 20# anode. The person requesting reimbursement shall follow the procedures set forth by the Commission for Notice of Claim and Proof of Costs Incurred, Environmental Protection Program rules OAR 130-015-0040 through 130-015-0050.

(2) Notwithstanding the monetary limitation stated in section (1) of this rule, the Commission may reimburse up to \$250 for cost of two 20# anodes if the person responsible for the remedial action falls below the state median. In such cases, the person responsible for the remedial action shall submit to the Commission the person's most recent federal and state tax returns.

Stat. Auth.: ORS 469.248

Hist.: OH 1-1992, f. & cert. ef. 1-9-92; OH 2-1992(Temp), f. & cert. ef. 5-4-92; OH 3-1992, f. & cert. ef. 6-26-92

(1) A fee schedule for records search, and for copies of public records or information from public records, will be published by the Commission. The amount of the fees will be established from time to time on the basis of the Commission's reasonable estimates of the cost for:

(a) Staff time necessary to locate and handle the records;

(b) Producing the copies of the information; and

(c) Other supplies for procedures necessary to furnish the copies of information.

(2) The cost of mailing or shipping the copies of public records will be added to the amount of the fee from the fee schedule to arrive at the total fee.

(3) No fees will be charged to other state agencies for providing Commission transcripts, tapes, orders or any document or record of the Commission which is not exempt from disclosures under ORS 192.500.

[ED. NOTE: The fee schedule incorporated by reference is available from the agency.]

Stat. Auth.: ORS 469.248

Hist.: OH 4-1992, f. & cert. ef. 6-26-92

DIVISION 30

ADMINISTRATIVE PROCEDURES

130-030-0000

Public Records, Fees for Record Search and Copies of Public Records

(1) Inspection. All records of the Commission which are defined as public records and are not exempt from disclosure under ORS 192.410 and 192.500, shall be available for inspection by members of the public at the current principal offices of the Oil Heat Commission in Portland, Oregon or other reasonable location designated by the Administrator. Inspection of such records will be permitted:

(a) Upon request by an interested person of the custodian of such records;

(b) During normal work hours of the Commission staff;

(c) At reasonable times, provided there is no undue disruption of the work of the Commission or staff.

(2) Custodians and Certification. The Administrator and the Administrative Assistant are the custodians of the work of the Oil Heat Commission. The Administrator or the Administrative Assistant shall certify, upon request, release copies of Commission and Department public records as true copies.

Stat. Auth.: ORS 469.248

Hist.: OH 4-1992, f. & cert. ef. 6-26-92

130-030-0010

Requests to Inspect or Obtain Copies of Public Records

A request to inspect or obtain copies of a public record or information from public records may be made orally or in writing and shall include:

(1) The name, address and telephone number of the requester, except as considered unnecessary by the Commission;

(2) Specification of the number of copies requested of the record if copies are requested.

Stat. Auth.: ORS 469.248

Hist.: OH 4-1992, f. & cert. ef. 6-26-92

130-030-0020

Fees for Inspection and Copies of Public Records
