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Date: February 7, 2000

To: Environmental Quality Commission Members,
Rulemaking Work Group Members,
Public Commentators, and Interested Parties

From: Laurie McCulloch, UST Program

Subject: Correction to EQC Report for Heating Oil Tank Rule Revisions
Agenda Item G, February 11, 2000 EQC Meeting

Please note the following correction to the copy of the Environmental Quality Commission (EQC) staff report and rule package that you received.

Agenda Item G:
Attachment A.1, pages 1-11 is incorrect. Text for proposed deletion is not indicated in the copy you have. Please recycle this copy or mark it as not to be used.

Attached is the correct version of proposed rule revisions to Division 163. Although the words in the two versions are the same, **this** copy shows the changes that were made in red-line (new text), strike-out (~~deleted text~~) format.

My apologies for the error and any confusion this may have caused. If you have any questions, please contact me directly at 503-229-5769.

Laurie A McCulloch

attachment

Correct Version - red-line, strike-out 2/7/00 L. McCulloch

DIVISION 163

~~REGISTRATION AND~~ LICENSING REQUIREMENTS FOR ~~HEATING OIL TANK SOIL MATRIX CLEANUP~~ SERVICE PROVIDERS AND SUPERVISORS PROVIDING HEATING OIL TANK SERVICES

340-163-0005
Authority, Purpose, and Scope

(1) These rules are promulgated in accordance with and under the authority of ORS 466.706 and 466.750.

(2) The purpose of these rules is to provide for the regulation of ~~companies~~firms and individuals~~persons~~ who perform heating oil tank services for underground heating oil tanks.~~cleanup soil contamination resulting from spills and releases of heating oil from heating oil tanks utilizing the soil matrix standards in OAR 340-122-0305 to 340-122-0360.~~ These rules establish standards for:

(a) Licensing of firms performing heating oil tank ~~soil matrix cleanup~~ services ~~for heating oil tanks~~;

(b) Examination, qualification and licensing of individuals who supervise heating oil tank ~~soil matrix cleanup~~ services ~~for heating oil tanks~~; and

(c) Administration and enforcement of these rules by the Department.

(3) ~~Scope:~~

~~(a) OAR 340-163-0005 through 340-163-0150 applies~~These rules apply to ~~cleanup by~~ any individual or firm who performs or offers to perform heating oil tank services.~~person of soil contamination resulting from spills and releases of heating oil from heating oil tanks;~~

~~(b) OAR 340-163-0005 through 340-163-0150 do not apply to services performed by the tank owner, property owner or permittee.~~

(4) Service ~~P~~providers and ~~S~~supervisors licensed under this Division are not licensed to perform work under:

(a) OAR Chapter 340, Division 162 ~~Registration and Licensing Requirements for Underground Storage Tank Soil Matrix Cleanup Service Providers and Supervisors.~~; or

(b) OAR Chapter 340, Division 160.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0010
Definitions

As used in ~~these rules~~this Division, the following definitions apply:

(1) "Commission" means the Environmental Quality Commission.

(2) "Confirmed Release" means petroleum contamination observed in soil or groundwater as a sheen, stain, or petroleum odor, or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December, 1996), or analytical results of 50 mg/kg or greater for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996),

or detected in groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218.

(3) "Corrective Action" has the same meaning as given in ORS 466.706.

(4) "Decommissioning" means to remove an underground heating oil tank from operation by an approved method specified in OAR 340-177-0025, such as abandonment in place (e.g. cleaning and filling with an inert material) or by removal from the ground.

~~(2) "Closure" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.~~

(~~3~~5) "Department" means the Oregon Department of Environmental Quality.

~~(4) "Director" means the Director of the Oregon Department of Environmental Quality.~~

~~(5) "Facility" means the location at which heating oil tanks are in place or will be placed. A facility encompasses the entire property contiguous to the heating oil tanks that is associated with the use of the tanks.~~

(6) "Fee" means a fixed charge or service charge.

(7) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in the performance of heating oil tank services.

(8) "Heating Oil" means petroleum that is No. 1, No. 2, No. 4 — heavy, No. 5 - light, No. 5 — heavy, and No. 6 - technical grades of fuel oil: other residual fuel oils (including Navy Special Fuel oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils.

(9) "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.

(10) "Heating Oil Tank Services" means the decommissioning of a heating oil tank or the performance of corrective action necessary as a result of a release of oil from an underground heating oil tank.

(1~~0~~1) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of heating oil tank services has met the Department's ~~experience and~~ qualification requirements to offer or perform such services ~~related to heating oil tanks~~ and has been issued a license by the Department ~~to perform those services~~.

~~(11) "Permittee", as used in this section, has the meaning set forth in ORS 466.706(9).~~

~~(12) "Soil Matrix Cleanup" means soil cleanup action taken to comply with OAR 340-122-0305 through 340-122-0360.~~

(12) "Responsible Person" means "owner or operator" as defined in ORS 465.200(19) and any other person liable for or voluntarily undertaking remediation under ORS 465.200, and is used synonymously with the term "tank owner" in this Division.

(13) "Service Provider" is a firm licensed to offer and perform heating oil tank services on underground heating oil tanks in Oregon.

(1~~3~~4) "Supervisor" means a licensed individual ~~operating alone or employed by a contractor and~~ who is charged with the responsibility ~~to~~for directing and overseeing the performance of heating oil tank services at a ~~facility~~tank site.

~~(14) "Tank" means heating oil tank.~~

~~(15) "Tank Services" include but are not limited to soil cleanup of heating oil.~~

~~(16) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on heating oil tanks in Oregon.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & ORS 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0020
General Provisions

(1) Effective March 15, 2000~~After January 1, 1991~~, no firm ~~shall~~may perform or offer to perform heating oil tank ~~soil matrix cleanup~~ services without first having obtained a ~~H~~heating ~~O~~oil ~~T~~tank ~~Soil Matrix Cleanup S~~service ~~P~~provider license from the Department. Such services include, but are not limited to, site assessments on active or inactive heating oil tanks, decommissioning and cleanup.

~~(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.~~

(~~3~~2) Any ~~Heating Oil Tank Soil Matrix Cleanup S~~service ~~P~~provider licensed ~~or certified~~ by the Department under the provisions of these rules ~~shall~~must comply with the appropriate provisions of:

(a) ~~Comply with the appropriate provisions of~~ OAR Chapter 340, Division 163~~340-163-0005 through 340-163-0150~~;

(b) ~~Comply with the appropriate provisions of~~ OAR 340-122-0~~3~~205 through 340-122-0363~~5~~;

(c) OAR Chapter 340, Division 177; and

(d) Any other federal, state, or local regulations applicable to underground heating oil tanks.

(3) A service provider must:

(a) Certify that heating oil tank services have been conducted in compliance with all applicable regulations in accordance with OAR 340-163-0060;

(b) Hold and continuously maintain a valid certificate of registration with the Oregon Construction Contractors Board as required by their regulations;

(c) Hold and continuously maintain insurance in accordance with OAR 340-163-0050;

(d) Provide proof of current license upon request by Department staff or the tank owner at all times a service provider is performing heating oil tank services at a tank site; and

(~~e~~e) Maintain a current address on file with the Department.~~; and~~ Mail sent to the service provider that is returned to the Department by the U.S. Postal Service as undeliverable may be considered a failure to comply.

(4) A service provider or supervisor must report a confirmed release of petroleum from an underground heating oil tank to the Department within 72-hours of discovery. This report may be made by telephone or in writing (e.g. facsimile) on a form provided by the Department. The Department will assign a "site identification" or "log" number for each release, which will serve as confirmation of reporting.

(5) In the event a service provider no longer employs a supervisor, the service provider must stop work on any heating oil project until a supervisor is again employed by the service provider.

~~(d) Perform soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.~~

~~(4) A firm licensed to perform heating oil tank soil matrix cleanup services must submit a checklist to the Department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.~~

(~~5~~6) ~~After January 1, 1991~~Effective March 15, 2000, a licensed ~~H~~heating ~~O~~oil ~~T~~tank ~~Soil Matrix Cleanup Services S~~supervisor ~~shall~~must be present at a tank site when the following tasks are ~~being~~ performed~~.~~:

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) ~~When any tanks or lines are permanently closed by removal from the ground or filled in place as a result of a suspected or confirmed release~~After a tank has been cleaned: when examined for holes and leaks and is filled with an inert material, or when the tank is physically removed from the ground;

(c) When all soil ~~and/~~or water samples are collected and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination; or

(e) ~~During removal from the open excavation or disposal of~~When any free product or groundwater is removed from an open excavation or disposed.~~; and~~

(7) Licensed supervisors must maintain a current address with the Department at all times during the license period. Mail sent to the individual that is returned to the Department by the U.S. Postal Service as undeliverable may be considered a failure to comply.

(8) Licensed supervisors must provide proof of current licensing upon request by Department staff or by the tank owner.

~~(6) After January 1, 1991 Service Providers shall not backfill or close a soil cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

~~**340-163-0025**~~

~~**Types of Licenses**~~

~~(1) The Department may issue the following types of licenses:~~

~~(a) Heating Oil Tank Soil Matrix Cleanup Services Provider;~~

~~(b) Heating Oil Tank Soil Matrix Cleanup Supervisor.~~

~~(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.~~

~~Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995~~

~~Stats. Implemented: ORS 466.750~~

~~Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90~~

340-163-0030

Licensing ~~of~~Requirements for Heating Oil Tank ~~Soil Matrix Cleanup Services~~ Providers

~~(1) After September 1, 1990, firms providing Heating Oil Tank Soil Matrix Cleanup services may apply for Heating Oil Tank Soil Matrix Cleanup Services Provider license from the Department.~~

(~~2~~1) ~~Licensing shall be accomplished by:~~The Department will issue a license for heating oil tank services to firms who complete

~~(a) Completing~~ and submit a license application ~~provided by~~to the Department~~;~~ that includes, but is not limited to, the following information:~~ or~~

~~(b) Submitting the following information to the Department:~~

(~~A~~a) The name of the firm or assumed business name as registered with the Oregon Corporation Division, and address and telephone number of the firm;

(b) The names and addresses of all principals of the firm;

~~(B) The nature of the services to be offered;~~

~~(c) A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm;~~

(~~D~~c) ~~Identifying t~~The names and supervisor license numbers and expiration dates of all employees or principals responsible for on-site project supervision;~~ and~~

(d) Proof of insurance as required by OAR 340-163-0050(3);

(e) Current Construction Contractors Board registration number;

(f) General information about any underground storage tank work (regulated or heating oil) performed in Oregon or any other state(s) within the previous year as applicable; and

(~~E~~g) ~~Remitting t~~The required license fee.

(~~3~~2) The Department will review the application for completeness. If the application is incomplete, the Department ~~shall~~will notify the applicant by telephone or in writing of the deficiencies.

~~(4) The Department shall deny, in writing, a license to a Heating Oil Tank Soil Matrix Cleanup Services Provider who has not satisfied the license application requirements.~~

(~~5~~3) Upon approval, t~~T~~he Department ~~shall~~will issue a license to the applicant ~~after the application is approved.~~ that is valid for twelve (12) months from the date of issue.

~~(6) The Department shall grant a license for a period of twenty-four (24) months.~~

(~~7~~4) ~~Renewals:~~

~~(a)~~ License renewals must be applied for and will be issued in the same manner as ~~is~~ required for an initial license~~,~~; except:

(~~b~~a) The complete renewal application ~~shall~~must be submitted to the Department no later than 30 days prior to the license expiration date~~.~~;

(b) The application must include a list of all heating oil tank site assessments and certified decommissioning and cleanup projects worked on during the previous twelve (12) month period. The list must include, but is not limited to, the name of the property owner, address of the property, date(s) the services were performed, and the type of services performed (i.e. site assessment, decommissioning, cleanup).

(c) The renewal license period will be for twelve (12) months from the expiration date of the previous license issued. If the current license lapses for any reason, the service provider may not perform or offer to perform heating oil tank services during any time between the expiration date and issuance of the renewal license.

(5) If a firm changes its business name, but there are no changes in the corporate structure (i.e. all principals remain the same), a request for a business name change and re-issuance of the service provider license must be made in writing and be accompanied by the required fee for name changes. A copy of the certificate of insurance with the new corporate name must be included. The license period will remain the same as issued to the previous business name.

(6) If the Construction Contractors Board requires that a firm re-register as a new entity, the service provider license issued by the Department will become invalid and the firm must reapply as a new applicant.

~~(8) The Department may suspend or revoke a license if the tank services provider:~~

~~(a) Fraudulently obtains or attempts to obtain a license;~~

~~(b) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission;~~

~~(c) Fails to meet any applicable state or federal standard relating to the service performed under the license;~~

~~(d) Fails to employ and designate a licensed supervisor for each project.~~

~~(9) A Heating Oil Tank Soil Matrix Cleanup Services Provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.~~

~~(10) In the event a Heating Oil Tank Soil Matrix Cleanup Services provider no longer employs a licensed supervisor the services provider must stop work on any heating oil soil matrix cleanup. Work shall not start until a licensed Heating Oil Tank Soil Matrix Cleanup Supervisor is again employed by the provider and written notice of the hiring of a licensed Heating Oil Tank Soil Matrix Supervisor is received by the Department.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0035

Licensing and Examination Requirements for Heating Oil Tank ~~Soil Matrix Cleanup~~ Supervisors ~~Examination and Licensing~~

(1) ~~To obtain a license from the Department to supervise heating oil tank soil matrix cleanup services from a heating oil tank, a~~An individual must take and pass a qualifying examination approved by the Department to be eligible to apply for a license to supervise heating oil tank services when employed by a licensed heating oil tank service provider. The Department may use examinations administered by a nationally recognized underground storage tank examination firm or organization.

(2) If no national examination system is available or if an Oregon-specific testing method is determined necessary by the Department, the Department may develop an examination process that may include field tests in addition to or in lieu of a written examination, that is specific to heating oil tank services, is administered by the Department, and that includes reimbursement of an amount sufficient to cover the costs of administering the examination.

(3) The Department will issue a license for heating oil tank site assessment, decommissioning and cleanup activities to individuals who complete and submit a license

application to the Department that includes, but is not limited to, the following information:

(a) Name and address of the individual;

(b) Name, address and license number of the service provider that the individual is employed by or is regularly associated with;

(c) Original or clearly legible copy of documentation that the applicant has successfully passed the appropriate supervisor examination; and

(d) The required fee.

~~(2) Applications for Heating Oil Tank Soil Matrix Supervisor Licenses – General Requirements:~~

(~~a~~4) Applications must be submitted to the Department within 30 days of passing the qualifying examination~~;~~.

(5) The Department will review the application for completeness. If the application is incomplete, the applicant will be notified of deficiencies by telephone or in writing.

(6) After the application is approved, the Department will issue a supervisor license to the applicant that is valid for twenty-four (24) months from the date of issue. The license is in the form of an identification card that includes the name of the individual, license number and expiration date.

~~(b) Application shall be submitted on forms provided by the Department and shall be accompanied by the appropriate fee;~~

~~(c) The application to be a Licensed Heating Oil Tank Soil Matrix Supervisor shall include:~~

~~(A) Documentation that the applicant has successfully passed the heating oil tank soil matrix Supervisor examination;~~

~~(B) Any additional information that the Department may require.~~

~~(3) A license is valid for a period of 24 months after the date of issue.~~

(4~~7~~) License renewals must be applied for and will be issued in the same manner as the application for the original license, including re-examination~~.~~, except:

(a) The renewal license period will be for twenty-four (24) months from the expiration date of the previous license issued. If the current license lapses for any reason, the individual may not perform or offer to perform heating oil tank supervisory services during any time between the expiration date and issuance of the renewal license.

(8) Until July 1, 2000, or a later date determined by the Department, applicants for a heating oil tank supervisor license may use the Oregon Soil Matrix Cleanup examination to meet the requirements of OAR 340-163-0035(1). After that date, the Department will designate a heating-oil-specific examination as the qualifying examination. The Department may make a determination that more than one examination or license category is necessary.

~~(5) Suspension or Revocation:~~

~~(a) The Department may suspend or revoke a Heating Oil Tank Soil Matrix Supervisor's license for failure to comply with any state or federal rule or regulation pertaining to the cleanup of soil contamination from a heating oil tank;~~

~~(b) If a Heating Oil Tank Soil Matrix Cleanup Supervisor's license is revoked, an individual may not apply for another supervisor license prior to 90 days after the revocation date.~~

~~(6) Upon issuance of a Heating Oil Tank Soil Matrix Cleanup Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.~~

~~(7) The Supervisor's license identification card shall be available for inspection at each site.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

~~**Examination Schedule**~~

~~(1) At least once prior to November 1, 1990, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to became licensed to supervise soil matrix cleanups from heating oil tanks.~~

~~(2) Not less than 30 days prior to offering an examination the Department shall prepare and make available to interested persons, a study guide which may include sample examination questions.~~

~~(3) The Department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.~~

~~Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995~~
~~Stats. Implemented: ORS 466.750~~
~~Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90~~

340-163-0050
Service Provider Insurance Requirements

(1) Any firm applying for a service provider license to perform heating oil tank services must first obtain insurance coverage for errors-and-omissions or professional liability that will be used to pay for any additional corrective action necessary as a result of improper or inadequate site assessment, decommissioning or cleanup work. General liability insurance or pollution liability insurance are not acceptable substitutes for the insurance requirements.

(2) Insurance must be obtained in the amount of $500,000 per claim or per occurrence, with a total aggregate of $1,000,000, from an insurance company authorized to do business in Oregon. Coverage must remain continuous during the license period and until one (1) year after a firm has ceased to perform heating oil tank services in Oregon.

(3) Proof of insurance in the form of a standard insurance policy certificate must be provided to the Department at time of license application and renewal. The certificate of insurance must include the following:

(a) The name of the insurance company, policy number, effective dates of coverage, coverage amounts, deductible amount, name of all insured entities, agent's name, address and telephone number; and

(b) A 30-day cancellation clause that provides notice to the Department if the insurance is cancelled. Notices must be sent to: Department of Environmental Quality, Underground Storage Tank Program, 811 S.W. Sixth Avenue, Portland, Oregon, 97204.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0060
Certification of Work Performed

(1) A licensed service provider must certify to the Department that heating oil tank services have been performed in compliance with applicable regulations for each decommissioning or cleanup report submitted to the Department. Categories for certification are:

(a) Voluntary Decommissioning;

(b) Soil Matrix Cleanup;

(c) Heating Oil Tank Generic Remedy Cleanup; and

(d) Risk-Based Cleanup with a Corrective Action Plan.

(2) Each individual decommissioning or cleanup certification must contain the following elements:

(a) Statement of compliance that includes the following declaration by the business owner or senior corporate officer for the service provider: "Based on information and belief formed after reasonable inquiry, the heating oil tank services performed under this certification were conducted in compliance with all applicable federal, state and local laws.";

(b) Affirmation of insurance coverage as required by OAR 340-163-0050;

(c) Signature of service provider business owner or senior corporate officer;

(d) Technical report required by OAR 340-122-0205 to 340-122-0360 or OAR Chapter 340, Division 177 as appropriate, signed by the licensed supervisor responsible for the on-site supervision of the project;

(e) A list of technical standards and regulations covered by the certificate provided for the specific category, on a checklist provided by the Department; and

(f) The cost of each certified project, for the purpose of collecting general information by certification category. The service provider must provide information on a separate form provided by the Department, that includes the certification category, description of the complexity of the project, date the project was completed, name of the county the project is located in, and the project cost.

(3) Project certifications must be included with reports submitted by the tank owner, or service provider on owner's behalf, and accompanied by the required registration fee in accordance with OAR 340-177-0095.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0070
Department Review of Certified Reports

(1) The Department may review and verify the accuracy of certified decommissioning and cleanup reports using a variety of standard compliance verification methods, including, but not limited to:

(a) Review of certified reports submitted for Department approval;

(b) Field inspection of heating oil tank services at tank sites; and

(c) Inspection of records, equipment, or materials held or temporarily stored at the service provider's place of business or storage facility.

(2) The Department will document the result of any report review conducted in writing, which includes a brief summary of the report review or inspection results. This information will be provided to both the tank owner and the certifying service provider.

(3) Any enforcement actions taken as a result of a report review will be conducted in accordance with the applicable requirements of OAR Chapter 340, Division 12.

(4) The Department may reject any decommissioning or cleanup report that has been certified as in compliance with all applicable regulations by a service provider if, but not limited to, any of the following conditions exist:

(a) There is a lack of information or data included with the certified report to support the finding of compliance;

(b) The Department determines that the compliance determination is not accurate based on the information submitted;

(c) Some or all of the supporting documentation does not accurately reflect conditions at the tank site;

(d) Information obtained during a site inspection by the Department may impact the validity of the certification results; or

(e) There is a violation of applicable regulations that has or potentially could impact the validity of the certification results.

(5) For any rejected certified report, the Department may require the service provider or their insurance policy to take specific corrective action(s) that may include additional work at the tank site, including, but not limited to, additional sampling and analysis, contaminated soil removal, or removal of the heating oil tank. Completion of any required additional work must be coordinated with the property owner.

(6) For purposes of determining report certification accuracy, any employee or authorized representative of the Department may enter the tank site or service provider facility at any reasonable time to interview persons, inspect equipment and site conditions, collect samples, take still or video pictures, conduct an investigation, or review and copy records.

(7) To assist the Department in scheduling inspections, service providers must provide information regarding specific projects in progress on any specific day or days upon request by the Department.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0110
License Denial, Suspension, Revocation

(1) The Department may deny issuance of, suspend or revoke a license for fraud or deceit if the service provider or supervisor:

(a) Fraudulently obtains or attempts to obtain a license; or

(b) Knowingly signs required forms containing false information.

(2) The Department may also deny issuance of, suspend or revoke a license if the service provider or supervisor fails to comply with any applicable local, state or federal regulations pertaining to the performance of heating oil tank services or demonstrates negligence or incompetence, including but not limited to situations where the service provider or supervisor:

(a) Fails to employ and designate a licensed supervisor for each project;

(b) Fails to maintain required insurance;

(c) Fails to maintain appropriate registration with the Oregon Construction Contractors Board;

(d) Fails to resolve heating oil tank compliance related violations in accordance with an enforcement schedule or order issued by the Department;

(e) Fails to make corrections specified by the Department as the result of the Department's rejection of a decommissioning or cleanup report certified by the service provider;

(f) Fails to correct deficiencies noted by the Department for an incomplete license application;

(g) Fails to maintain a current address with the Department; or

(h) Fails at any time to satisfy the requirements for a license.

(3) A service provider or supervisor who has an application denied or license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the denial, suspension, or revocation has been resolved.

(4) Procedures for license denial, suspension, and revocation will be conducted in accordance with the appropriate provisions of ORS 183.310 to 183.550 and OAR Chapter 340, Division 12.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: new

340-163-0150
Fees

~~(1) Fees shall be assessed to provide revenues to operate the heating oil tank soil matrix cleanup services licensing program. Fees are assessed for the following:~~

~~(a) Heating Oil Tank Soil Matrix Cleanup Service Provider;~~

~~(b) Heating Oil Tank Soil Matrix Cleanup Supervisors Examination;~~

~~(c) Heating Oil Tank Soil Matrix Cleanup Supervisors License;~~

~~(d) Heating Oil Tank Soil Matrix Examination Study Guides.~~

(~~2~~1) Heating oil tank ~~soil matrix cleanup~~ service providers ~~shall~~must pay a non-refundable license ~~application~~ fee of $~~100~~750 for a ~~twenty four (24)~~twelve (12) month license.

~~(3) Individuals taking the Heating Oil Tank Soil Matrix Cleanup Supervisor licensing examination shall pay a non-refundable examination fee of $25.~~

(42) ~~Individuals seeking to obtain a~~ Heating ~~O~~oil ~~T~~tank ~~Soil Matrix Cleanup S~~supervisor~~'~~s ~~license shall~~must pay a non-refundable license ~~application~~ fee of $~~25~~150 for a ~~two year~~twenty-four (24) month license.

(3) Supervisors taking qualifying examinations administered by the Department must pay an examination fee equal to the cost of administering the examination.

(~~5~~4) Examination study guides ~~shall~~will be made available to the public for the cost of production. Copyrighted reference materials, which may have separate costs charged by the specific organization, are not included with study guides.

(~~6~~5) Replacement licenses, including name change requests, will be provided by the Department for a fee of $10.

Stat. Auth.: ORS 465.200 - ORS 465.320 & ORS 466.706 - ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91

Correct Version - red-line, strike-out 2/7/00 L. McCulloch

DIVISION 163

~~REGISTRATION AND~~ LICENSING REQUIREMENTS FOR ~~HEATING OIL TANK SOIL MATRIX CLEANUP~~ SERVICE PROVIDERS AND SUPERVISORS PROVIDING HEATING OIL TANK SERVICES

340-163-0005
Authority, Purpose, and Scope

(1) These rules are promulgated in accordance with and under the authority of ORS 466.706 and 466.750.

(2) The purpose of these rules is to provide for the regulation of ~~companies~~firms and individuals~~persons~~ who perform heating oil tank services for underground heating oil tanks.~~cleanup soil contamination resulting from spills and releases of heating oil from heating oil tanks utilizing the soil matrix standards in OAR 340-122-0305 to 340-122-0360.~~ These rules establish standards for:

(a) Licensing of firms performing heating oil tank ~~soil matrix cleanup~~ services ~~for heating oil tanks~~;

(b) Examination, qualification and licensing of individuals who supervise heating oil tank ~~soil matrix cleanup~~ services ~~for heating oil tanks~~; and

(c) Administration and enforcement of these rules by the Department.

(3) ~~Scope:~~

~~(a) OAR 340-163-0005 through 340-163-0150 applies~~These rules apply to ~~cleanup by~~ any individual or firm who performs or offers to perform heating oil tank services.~~person of soil contamination resulting from spills and releases of heating oil from heating oil tanks;~~

~~(b) OAR 340-163-0005 through 340-163-0150 do not apply to services performed by the tank owner, property owner or permittee.~~

(4) Service ~~P~~providers and ~~S~~supervisors licensed under this Division are not licensed to perform work under:

(a) OAR Chapter 340, Division 162 ~~Registration and Licensing Requirements for Underground Storage Tank Soil Matrix Cleanup Service Providers and Supervisors.~~; or

(b) OAR Chapter 340, Division 160.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0010
Definitions

As used in ~~these rules~~this Division, the following definitions apply:

(1) "Commission" means the Environmental Quality Commission.

(2) "Confirmed Release" means petroleum contamination observed in soil or groundwater as a sheen, stain, or petroleum odor, or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December, 1996), or analytical results of 50 mg/kg or greater for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996),

or detected in groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218.

(3) "Corrective Action" has the same meaning as given in ORS 466.706.

(4) "Decommissioning" means to remove an underground heating oil tank from operation by an approved method specified in OAR 340-177-0025, such as abandonment in place (e.g. cleaning and filling with an inert material) or by removal from the ground.

~~(2) "Closure" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.~~

(~~3~~5) "Department" means the Oregon Department of Environmental Quality.

~~(4) "Director" means the Director of the Oregon Department of Environmental Quality.~~

~~(5) "Facility" means the location at which heating oil tanks are in place or will be placed. A facility encompasses the entire property contiguous to the heating oil tanks that is associated with the use of the tanks.~~

(6) "Fee" means a fixed charge or service charge.

(7) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in the performance of heating oil tank services.

(8) "Heating Oil" means petroleum that is No. 1, No. 2, No. 4 — heavy, No. 5 - light, No. 5 — heavy, and No. 6 - technical grades of fuel oil: other residual fuel oils (including Navy Special Fuel oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils.

(9) "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.

(10) "Heating Oil Tank Services" means the decommissioning of a heating oil tank or the performance of corrective action necessary as a result of a release of oil from an underground heating oil tank.

(1~~0~~1) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of heating oil tank services has met the Department's ~~experience and~~ qualification requirements to offer or perform such services ~~related to heating oil tanks~~ and has been issued a license by the Department ~~to perform those services~~.

~~(11) "Permittee", as used in this section, has the meaning set forth in ORS 466.706(9).~~

~~(12) "Soil Matrix Cleanup" means soil cleanup action taken to comply with OAR 340-122-0305 through 340-122-0360.~~

(12) "Responsible Person" means "owner or operator" as defined in ORS 465.200(19) and any other person liable for or voluntarily undertaking remediation under ORS 465.200, and is used synonymously with the term "tank owner" in this Division.

(13) "Service Provider" is a firm licensed to offer and perform heating oil tank services on underground heating oil tanks in Oregon.

(1~~3~~4) "Supervisor" means a licensed individual ~~operating alone or employed by a contractor and~~ who is charged with the responsibility ~~to~~for directing and overseeing the performance of heating oil tank services at a ~~facility~~tank site.

~~(14) "Tank" means heating oil tank.~~

~~(15) "Tank Services" include but are not limited to soil cleanup of heating oil.~~

~~(16) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on heating oil tanks in Oregon.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & ORS 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0020
General Provisions

(1) Effective March 15, 2000~~After January 1, 1991~~, no firm ~~shall~~may perform or offer to perform heating oil tank ~~soil matrix cleanup~~ services without first having obtained a ~~H~~heating ~~O~~oil ~~T~~tank ~~Soil Matrix Cleanup S~~service ~~P~~provider license from the Department. Such services include, but are not limited to, site assessments on active or inactive heating oil tanks, decommissioning and cleanup.

~~(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.~~

(~~3~~2) Any ~~Heating Oil Tank Soil Matrix Cleanup S~~service ~~P~~provider licensed ~~or certified~~ by the Department under the provisions of these rules ~~shall~~must comply with the appropriate provisions of:

(a) ~~Comply with the appropriate provisions of~~ OAR Chapter 340, Division 163~~340-163-0005 through 340-163-0150~~;

(b) ~~Comply with the appropriate provisions of~~ OAR 340-122-03205 through 340-122-0363~~5~~;

(c) OAR Chapter 340, Division 177; and

(d) Any other federal, state, or local regulations applicable to underground heating oil tanks.

(3) A service provider must:

(a) Certify that heating oil tank services have been conducted in compliance with all applicable regulations in accordance with OAR 340-163-0060;

(b) Hold and continuously maintain a valid certificate of registration with the Oregon Construction Contractors Board as required by their regulations;

(c) Hold and continuously maintain insurance in accordance with OAR 340-163-0050;

(d) Provide proof of current license upon request by Department staff or the tank owner at all times a service provider is performing heating oil tank services at a tank site; and

(~~e~~e) Maintain a current address on file with the Department.~~; and~~ Mail sent to the service provider that is returned to the Department by the U.S. Postal Service as undeliverable may be considered a failure to comply.

(4) A service provider or supervisor must report a confirmed release of petroleum from an underground heating oil tank to the Department within 72-hours of discovery. This report may be made by telephone or in writing (e.g. facsimile) on a form provided by the Department. The Department will assign a "site identification" or "log" number for each release, which will serve as confirmation of reporting.

(5) In the event a service provider no longer employs a supervisor, the service provider must stop work on any heating oil project until a supervisor is again employed by the service provider.

~~(d) Perform soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.~~

~~(4) A firm licensed to perform heating oil tank soil matrix cleanup services must submit a checklist to the Department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.~~

(~~5~~6) ~~After January 1, 1991~~Effective March 15, 2000, a licensed ~~H~~heating ~~O~~oil ~~T~~tank ~~Soil Matrix Cleanup Services S~~supervisor ~~shall~~must be present at a tank site when the following tasks are ~~being~~ performed~~.~~:

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) ~~When any tanks or lines are permanently closed by removal from the ground or filled in place as a result of a suspected or confirmed release~~After a tank has been cleaned: when examined for holes and leaks and is filled with an inert material, or when the tank is physically removed from the ground;

(c) When all soil ~~and/~~or water samples are collected and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination; or

(e) ~~During removal from the open excavation or disposal of~~When any free product or groundwater is removed from an open excavation or disposed.~~; and~~

(7) Licensed supervisors must maintain a current address with the Department at all times during the license period. Mail sent to the individual that is returned to the Department by the U.S. Postal Service as undeliverable may be considered a failure to comply.

(8) Licensed supervisors must provide proof of current licensing upon request by Department staff or by the tank owner.

~~(6) After January 1, 1991 Service Providers shall not backfill or close a soil cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

~~**340-163-0025**~~

~~**Types of Licenses**~~

~~(1) The Department may issue the following types of licenses:~~

~~(a) Heating Oil Tank Soil Matrix Cleanup Services Provider;~~

~~(b) Heating Oil Tank Soil Matrix Cleanup Supervisor.~~

~~(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.~~

~~Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995~~

~~Stats. Implemented: ORS 466.750~~

~~Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90~~

340-163-0030

Licensing ~~of~~Requirements for Heating Oil Tank ~~Soil Matrix Cleanup~~ Services Providers

~~(1) After September 1, 1990, firms providing Heating Oil Tank Soil Matrix Cleanup services may apply for Heating Oil Tank Soil Matrix Cleanup Services Provider license from the Department.~~

(~~2~~1) ~~Licensing shall be accomplished by:~~The Department will issue a license for heating oil tank services to firms who complete

~~(a) Completing~~ and submit a license application ~~provided by~~to the Department~~;~~ that includes, but is not limited to, the following information:~~ or~~

~~(b) Submitting the following information to the Department:~~

(~~A~~a) The name of the firm or assumed business name as registered with the Oregon Corporation Division, and address and telephone number of the firm;

(b) The names and addresses of all principals of the firm;

~~(B) The nature of the services to be offered;~~

~~(c) A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm;~~

(~~D~~c) ~~Identifying t~~The names and supervisor license numbers and expiration dates of all employees or principals responsible for on-site project supervision;~~ and~~

(d) Proof of insurance as required by OAR 340-163-0050(3);

(e) Current Construction Contractors Board registration number;

(f) General information about any underground storage tank work (regulated or heating oil) performed in Oregon or any other state(s) within the previous year as applicable; and

(~~E~~g) ~~Remitting t~~The required license fee.

(~~3~~2) The Department will review the application for completeness. If the application is incomplete, the Department ~~shall~~will notify the applicant by telephone or in writing of the deficiencies.

~~(4) The Department shall deny, in writing, a license to a Heating Oil Tank Soil Matrix Cleanup Services Provider who has not satisfied the license application requirements.~~

(~~5~~3) Upon approval, t~~T~~he Department ~~shall~~will issue a license to the applicant~~ after the application is approved.~~ that is valid for twelve (12) months from the date of issue.

~~(6) The Department shall grant a license for a period of twenty-four (24) months.~~

(~~7~~4) ~~Renewals:~~

~~(a)~~ License renewals must be applied for and will be issued in the same manner as ~~is~~ required for an initial license~~,~~; except:

(~~b~~a) The complete renewal application ~~shall~~must be submitted to the Department no later than 30 days prior to the license expiration date~~.~~;

(b) The application must include a list of all heating oil tank site assessments and certified decommissioning and cleanup projects worked on during the previous twelve (12) month period. The list must include, but is not limited to, the name of the property owner, address of the property, date(s) the services were performed, and the type of services performed (i.e. site assessment, decommissioning, cleanup).

(c) The renewal license period will be for twelve (12) months from the expiration date of the previous license issued. If the current license lapses for any reason, the service provider may not perform or offer to perform heating oil tank services during any time between the expiration date and issuance of the renewal license.

(5) If a firm changes its business name, but there are no changes in the corporate structure (i.e. all principals remain the same), a request for a business name change and re-issuance of the service provider license must be made in writing and be accompanied by the required fee for name changes. A copy of the certificate of insurance with the new corporate name must be included. The license period will remain the same as issued to the previous business name.

(6) If the Construction Contractors Board requires that a firm re-register as a new entity, the service provider license issued by the Department will become invalid and the firm must reapply as a new applicant.

~~(8) The Department may suspend or revoke a license if the tank services provider:~~

~~(a) Fraudulently obtains or attempts to obtain a license;~~

~~(b) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission;~~

~~(c) Fails to meet any applicable state or federal standard relating to the service performed under the license;~~

~~(d) Fails to employ and designate a licensed supervisor for each project.~~

~~(9) A Heating Oil Tank Soil Matrix Cleanup Services Provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.~~

~~(10) In the event a Heating Oil Tank Soil Matrix Cleanup Services provider no longer employs a licensed supervisor the services provider must stop work on any heating oil soil matrix cleanup. Work shall not start until a licensed Heating Oil Tank Soil Matrix Cleanup Supervisor is again employed by the provider and written notice of the hiring of a licensed Heating Oil Tank Soil Matrix Supervisor is received by the Department.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0035

Licensing and Examination Requirements for Heating Oil Tank ~~Soil Matrix Cleanup~~ Supervisors ~~Examination and Licensing~~

(1) ~~To obtain a license from the Department to supervise heating oil tank soil matrix cleanup services from a heating oil tank, a~~An individual must take and pass a qualifying examination approved by the Department to be eligible to apply for a license to supervise heating oil tank services when employed by a licensed heating oil tank service provider. The Department may use examinations administered by a nationally recognized underground storage tank examination firm or organization.

(2) If no national examination system is available or if an Oregon-specific testing method is determined necessary by the Department, the Department may develop an examination process that may include field tests in addition to or in lieu of a written examination, that is specific to heating oil tank services, is administered by the Department, and that includes reimbursement of an amount sufficient to cover the costs of administering the examination.

(3) The Department will issue a license for heating oil tank site assessment, decommissioning and cleanup activities to individuals who complete and submit a license

application to the Department that includes, but is not limited to, the following information:

(a) Name and address of the individual;

(b) Name, address and license number of the service provider that the individual is employed by or is regularly associated with;

(c) Original or clearly legible copy of documentation that the applicant has successfully passed the appropriate supervisor examination; and

(d) The required fee.

~~(2) Applications for Heating Oil Tank Soil Matrix Supervisor Licenses — General Requirements:~~

(~~a~~4) Applications must be submitted to the Department within 30 days of passing the qualifying examination~~;~~.

(5) The Department will review the application for completeness. If the application is incomplete, the applicant will be notified of deficiencies by telephone or in writing.

(6) After the application is approved, the Department will issue a supervisor license to the applicant that is valid for twenty-four (24) months from the date of issue. The license is in the form of an identification card that includes the name of the individual, license number and expiration date.

~~(b) Application shall be submitted on forms provided by the Department and shall be accompanied by the appropriate fee;~~

~~(c) The application to be a Licensed Heating Oil Tank Soil Matrix Supervisor shall include:~~

~~(A) Documentation that the applicant has successfully passed the heating oil tank soil matrix Supervisor examination;~~

~~(B) Any additional information that the Department may require.~~

~~(3) A license is valid for a period of 24 months after the date of issue.~~

(47) License renewals must be applied for and will be issued in the same manner as the application for the original license, including re-examination~~.~~, except:

(a) The renewal license period will be for twenty-four (24) months from the expiration date of the previous license issued. If the current license lapses for any reason, the individual may not perform or offer to perform heating oil tank supervisory services during any time between the expiration date and issuance of the renewal license.

(8) Until July 1, 2000, or a later date determined by the Department, applicants for a heating oil tank supervisor license may use the Oregon Soil Matrix Cleanup examination to meet the requirements of OAR 340-163-0035(1). After that date, the Department will designate a heating-oil-specific examination as the qualifying examination. The Department may make a determination that more than one examination or license category is necessary.

~~(5) Suspension or Revocation:~~

~~(a) The Department may suspend or revoke a Heating Oil Tank Soil Matrix Supervisor's license for failure to comply with any state or federal rule or regulation pertaining to the cleanup of soil contamination from a heating oil tank;~~

~~(b) If a Heating Oil Tank Soil Matrix Cleanup Supervisor's license is revoked, an individual may not apply for another supervisor license prior to 90 days after the revocation date.~~

~~(6) Upon issuance of a Heating Oil Tank Soil Matrix Cleanup Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.~~

~~(7) The Supervisor's license identification card shall be available for inspection at each site.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

~~Examination Schedule~~

~~(1) At least once prior to November 1, 1990, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to became licensed to supervise soil matrix cleanups from heating oil tanks.~~

~~(2) Not less than 30 days prior to offering an examination the Department shall prepare and make available to interested persons, a study guide which may include sample examination questions.~~

~~(3) The Department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.~~

~~Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995~~
~~Stats. Implemented: ORS 466.750~~
~~Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90~~

340-163-0050

Service Provider Insurance Requirements

(1) Any firm applying for a service provider license to perform heating oil tank services must first obtain insurance coverage for errors-and-omissions or professional liability that will be used to pay for any additional corrective action necessary as a result of improper or inadequate site assessment, decommissioning or cleanup work. General liability insurance or pollution liability insurance are not acceptable substitutes for the insurance requirements.

(2) Insurance must be obtained in the amount of $500,000 per claim or per occurrence, with a total aggregate of $1,000,000, from an insurance company authorized to do business in Oregon. Coverage must remain continuous during the license period and until one (1) year after a firm has ceased to perform heating oil tank services in Oregon.

(3) Proof of insurance in the form of a standard insurance policy certificate must be provided to the Department at time of license application and renewal. The certificate of insurance must include the following:

(a) The name of the insurance company, policy number, effective dates of coverage, coverage amounts, deductible amount, name of all insured entities, agent's name, address and telephone number; and

(b) A 30-day cancellation clause that provides notice to the Department if the insurance is cancelled. Notices must be sent to: Department of Environmental Quality, Underground Storage Tank Program, 811 S.W. Sixth Avenue, Portland, Oregon, 97204.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0060
Certification of Work Performed

(1) A licensed service provider must certify to the Department that heating oil tank services have been performed in compliance with applicable regulations for each decommissioning or cleanup report submitted to the Department. Categories for certification are:

(a) Voluntary Decommissioning;

(b) Soil Matrix Cleanup;

(c) Heating Oil Tank Generic Remedy Cleanup; and

(d) Risk-Based Cleanup with a Corrective Action Plan.

(2) Each individual decommissioning or cleanup certification must contain the following elements:

(a) Statement of compliance that includes the following declaration by the business owner or senior corporate officer for the service provider: "Based on information and belief formed after reasonable inquiry, the heating oil tank services performed under this certification were conducted in compliance with all applicable federal, state and local laws.";

(b) Affirmation of insurance coverage as required by OAR 340-163-0050;

(c) Signature of service provider business owner or senior corporate officer;

(d) Technical report required by OAR 340-122-0205 to 340-122-0360 or OAR Chapter 340, Division 177 as appropriate, signed by the licensed supervisor responsible for the on-site supervision of the project;

(e) A list of technical standards and regulations covered by the certificate provided for the specific category, on a checklist provided by the Department; and

(f) The cost of each certified project, for the purpose of collecting general information by certification category. The service provider must provide information on a separate form provided by the Department, that includes the certification category, description of the complexity of the project, date the project was completed, name of the county the project is located in, and the project cost.

(3) Project certifications must be included with reports submitted by the tank owner, or service provider on owner's behalf, and accompanied by the required registration fee in accordance with OAR 340-177-0095.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0070
Department Review of Certified Reports

(1) The Department may review and verify the accuracy of certified decommissioning and cleanup reports using a variety of standard compliance verification methods, including, but not limited to:

(a) Review of certified reports submitted for Department approval;

(b) Field inspection of heating oil tank services at tank sites; and

(c) Inspection of records, equipment, or materials held or temporarily stored at the service provider's place of business or storage facility.

(2) The Department will document the result of any report review conducted in writing, which includes a brief summary of the report review or inspection results. This information will be provided to both the tank owner and the certifying service provider.

(3) Any enforcement actions taken as a result of a report review will be conducted in accordance with the applicable requirements of OAR Chapter 340, Division 12.

(4) The Department may reject any decommissioning or cleanup report that has been certified as in compliance with all applicable regulations by a service provider if, but not limited to, any of the following conditions exist:

(a) There is a lack of information or data included with the certified report to support the finding of compliance;

(b) The Department determines that the compliance determination is not accurate based on the information submitted;

(c) Some or all of the supporting documentation does not accurately reflect conditions at the tank site;

(d) Information obtained during a site inspection by the Department may impact the validity of the certification results; or

(e) There is a violation of applicable regulations that has or potentially could impact the validity of the certification results.

(5) For any rejected certified report, the Department may require the service provider or their insurance policy to take specific corrective action(s) that may include additional work at the tank site, including, but not limited to, additional sampling and analysis, contaminated soil removal, or removal of the heating oil tank. Completion of any required additional work must be coordinated with the property owner.

(6) For purposes of determining report certification accuracy, any employee or authorized representative of the Department may enter the tank site or service provider facility at any reasonable time to interview persons, inspect equipment and site conditions, collect samples, take still or video pictures, conduct an investigation, or review and copy records.

(7) To assist the Department in scheduling inspections, service providers must provide information regarding specific projects in progress on any specific day or days upon request by the Department.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0110
License Denial, Suspension, Revocation

(1) The Department may deny issuance of, suspend or revoke a license for fraud or deceit if the service provider or supervisor:

(a) Fraudulently obtains or attempts to obtain a license; or

(b) Knowingly signs required forms containing false information.

(2) The Department may also deny issuance of, suspend or revoke a license if the service provider or supervisor fails to comply with any applicable local, state or federal regulations pertaining to the performance of heating oil tank services or demonstrates negligence or incompetence, including but not limited to situations where the service provider or supervisor:

(a) Fails to employ and designate a licensed supervisor for each project;

(b) Fails to maintain required insurance;

(c) Fails to maintain appropriate registration with the Oregon Construction Contractors Board;

(d) Fails to resolve heating oil tank compliance related violations in accordance with an enforcement schedule or order issued by the Department;

(e) Fails to make corrections specified by the Department as the result of the Department's rejection of a decommissioning or cleanup report certified by the service provider;

(f) Fails to correct deficiencies noted by the Department for an incomplete license application;

(g) Fails to maintain a current address with the Department; or

(h) Fails at any time to satisfy the requirements for a license.

(3) A service provider or supervisor who has an application denied or license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the denial, suspension, or revocation has been resolved.

(4) Procedures for license denial, suspension, and revocation will be conducted in accordance with the appropriate provisions of ORS 183.310 to 183.550 and OAR Chapter 340, Division 12.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: new

340-163-0150
Fees

~~(1) Fees shall be assessed to provide revenues to operate the heating oil tank soil matrix cleanup services licensing program. Fees are assessed for the following:~~

~~(a) Heating Oil Tank Soil Matrix Cleanup Service Provider;~~

~~(b) Heating Oil Tank Soil Matrix Cleanup Supervisors Examination;~~

~~(c) Heating Oil Tank Soil Matrix Cleanup Supervisors License;~~

~~(d) Heating Oil Tank Soil Matrix Examination Study Guides.~~

(~~2~~1) Heating oil tank ~~soil matrix cleanup~~ service providers ~~shall~~must pay a non-refundable license ~~application~~ fee of $~~100~~750 for a ~~twenty-four (24)~~twelve (12) month license.

~~(3) Individuals taking the Heating Oil Tank Soil Matrix Cleanup Supervisor licensing examination shall pay a non-refundable examination fee of $25.~~

(4~~2~~) ~~Individuals seeking to obtain a~~ Heating ~~O~~oil ~~T~~tank ~~Soil Matrix Cleanup S~~supervisor~~'s license shall~~must pay a non-refundable license ~~application~~ fee of $~~25~~150 for a ~~two year~~twenty-four (24) month license.

(3) Supervisors taking qualifying examinations administered by the Department must pay an examination fee equal to the cost of administering the examination.

(~~5~~4) Examination study guides ~~shall~~will be made available to the public for the cost of production. Copyrighted reference materials, which may have separate costs charged by the specific organization, are not included with study guides.

(~~6~~5) Replacement licenses, including name change requests, will be provided by the Department for a fee of $10.

Stat. Auth.: ORS 465.200 - ORS 465.320 & ORS 466.706 - ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item G
February 11, 2000 EQC Meeting

Title:

Heating Oil Tank Technical and Service Provider Licensing Rule Revisions

Summary:

The Department is proposing rule changes to two rule divisions pertaining to heating oil tanks and the licensing of companies who perform heating oil tank services. These changes are necessary to implement laws passed by the 1999 Legislative Assembly in H.B. 3107 and S.B. 542. The most significant new additional requirements are:

- adds technical standards for decommissioning heating oil tanks, including soil sampling
- requires decommissioning projects as requested by owner and all cleanup projects to be certified as in compliance by licensed service provider
- adds $50 fee to have certified reports filed and approved by DEQ
- requires service providers to have errors-and-omissions insurance for work performed
- increases license fees for service providers and supervisors

The funding for this program is based on service provider and supervisor license fees, certified report filing fee, and general funds for 1999-2001. Four positions have been approved to conduct the work involved with the program.

License fees are set by the Legislature at $750 per year for a service provider (company) and $75 per year (i.e. $150 every two years) for supervisors. The $50 filing fee is also set by statute. These fees allow for project-specific oversight without cost recovery.

Department Recommendation:

It is recommended that the Commission adopt the proposed amendments and additions to the Heating Oil Tank rules (OAR Chapter 340, Division 177) and Heating Oil Tank Service Provider Licensing rules (OAR Chapter 340, Division 163) as presented in Attachments A.1 and A.2 of the Department's Staff Report.

Report Author	Division Administrator	Director
Laurie J. McCulloch	Mary Wahl	Langdon Marsh

Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

State of Oregon
Department of Environmental Quality Memorandum

Date: January 24, 2000

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item G, Heating Oil Tanks, February 11, 2000 EQC Meeting

Background

On November 15, 1999 the Director authorized the Underground Storage Tank (UST) Program of the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which would create a new service provider license specific for heating oil tank services and add technical requirements for decommissioning underground heating oil tanks.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on December 1, 1999. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on November 17, 1999.

Two Public Hearings were held: the first hearing was on December 16, 1999 at 2:00 P.M. in Eugene, with Karen White-Fallon serving as Presiding Officer; the second hearing was on December 21, 1999 at 7:00 P.M. in Portland, with Mitch Scheel serving as Presiding Officer. Written comment was received through 5:00 P.M. on January 3, 2000. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment E.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for

public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

The 1999 Legislature passed two bills that required rule changes to implement. Senate Bill 542 abolishes the Oil Heat Commission and ended the funding program for grants to homeowners who voluntarily decommissioned a heating oil tank.

House Bill 3107 specifies requirements for licensing of companies and individuals who provide heating oil tank services. This includes requirements for certification of work performed, and insurance to cover errors and omissions. Decommissioning standards must be established (previously only "recommended practices" were available). The bill requires DEQ to set standards for tank owners who voluntarily choose to decommission a tank. DEQ registers receipt of the certified reports and prepares an acknowledgement for a $50 fee, closing DEQ records of the release and/or decommissioning. DEQ will audit (i.e. review reports and conduct inspections) some of the work of licensed service providers and supervisors and can reject certifications that do not meet standards.

Relationship to Federal and Adjacent State Rules

None. There are no federal requirements for heating oil tanks. Washington State sets cleanup standards for the cleanup of releases from heating oil tanks and requires cleanup of contamination when groundwater is impacted.

Authority to Address the Issue

The Department has the statutory authority to address this issue under ORS 466.706. These rules implement ORS 466.706 (House Bill 3107 and Senate Bill 542).

Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)

A work group comprised of representatives for service providers, homeowners, environmental law practitioners, realtors, banking, utilities, Oregon Petroleum Marketing Association, insurance, and local government (fire, building) was established. This group met four times in September and October 1999 to provide input on rule concepts and to review draft rules. The requirement to collect two soil samples when the tank is decommissioned and have those samples tested for Total Petroleum Hydrocarbons (TPH) was widely discussed and work group members and individuals in the audience tended to have strong feelings one way or another.

DEQ consulted with the Construction Contractors Board to ensure that these rules do not duplicate other insurance requirements and to provide consistency in licensing requirements where feasible. Information obtained during an "early implementation" trial during December, 1999 provided additional feedback that was useful in making some changes after the initial rules were developed. This trial allows licensed service providers to certify cleanup projects and have the reports filed with DEQ for the $50 filing fee.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

This proposal would modify Oregon Administrative Rules (OAR) Chapter 340, Division 177 "Heating Oil Underground Storage Tanks" in the following ways:

- Deletes rule language for providing grants to homeowners for decommissioning a residential heating oil tank
- Adds technical standards for decommissioning heating oil tanks, including sampling
- Requires heating oil tank cleanup projects to be certified by a licensed service provider
- Retains voluntary decommissioning, but requires that a licensed service provider must certify the work, and the work must meet technical standards, if tank owner wants DEQ to file and approve report
- Imposes $50 fee to have certified reports filed and approved by DEQ

This proposal would modify OAR Chapter 340, Division 163 "Licensing Requirements for Service Providers and Supervisors of Heating Oil Tank Services" in the following ways:

- Adds license requirements for decommissioning and site assessment to existing cleanup license requirements
- Adds requirement for heating oil tank service providers to be registered with Construction Contractors Board (CCB) as required by CCB regulations
- Requires service providers to certify that heating oil tank services for each project have been performed in accordance with rules
- Allows DEQ to review work performed by service providers and reject certifications under certain circumstances
- Requires insurance to cover cost of additional work required for rejected certifications (e.g. errors-and-omissions insurance)
- Increases license fees for companies from $100 every two years to $750 per year
- Increases license fees for individuals from $25 to $150 every two years

Summary of Significant Public Comment and Changes Proposed in Response

The most significant issue during public comment period was the cost of and amount of insurance required by service providers. DEQ proposes changes to these requirements as a result. The next issue most commented on was the amount of the license fee increases. These fees were set by statute and not in this rule action. Any changes to the fees would require legislative action.

Although the discussion on whether to require soil testing when tanks are decommissioned was very active during work group meetings, no public comment was submitted on this issue. The Department believes this requirement is crucial to ensure that environmental protection has been achieved before a decommissioning project can be certified. This requirement remains in the proposed rules.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

DEQ will implement the rules by providing written guidance to tank owners who need information on decommissioning a tank or cleaning up a release of heating oil. DEQ has notified currently licensed service providers and supervisors and contractors registered with the Construction Contractors Board of proposed rule changes and will provide training and written guidance materials as necessary.

Early implementation of certification of cleanup projects is being conducted on a voluntary basis.

Service providers currently licensed for soil matrix cleanups who obtain errors-and-omissions insurance were given training and allowed to submit certified reports during December 1999 and January 2000. This allowed additional input from service providers and gave the Department an opportunity to develop early guidance materials that will be invaluable if the rules are adopted.

The Department will focus compliance review efforts on service provider certified reports. Department staff will conduct field inspections of service provider work in progress. Technical assistance will be provided to service providers by phone or on site at specific cleanup projects.

The Legislature approved four positions (4.0 FTE) to conduct the work involved with the program. Funding for this program is based on service provider and supervisor license fees, certified report filing fee and general funds for 1999-2001. Extensive efforts made by the Department so far this biennium on rule development, written guidance, and transition activities (backlog of reports that have not been reviewed by DEQ) may limit its efforts during the remainder of the biennium due to budget constraints. The Department needs to carefully monitor work efforts and budget to make sure it can smoothly implement the program goals of streamlined operation and ease of homeowners use of guidance information.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding heating oil tank service provider licensing and heating oil tank decommissioning standards as presented in Attachment A of the Department Staff Report.

Attachments

A. Rule Amendments Proposed for Adoption:
   1. OAR Chapter 340, Division 163, Service Provider Licensing
   2. OAR Chapter 340, Division 177, Heating Oil Tank Requirements
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
F. Advisory Committee Membership List
G. Rule Implementation Plan

Reference Documents (available upon request)

Written Comments Received (listed in Attachment C)

Approved:

Section: _____
Michael H. Kortenhof, Program Manager

Division: _____
Mary Wahl, Division Administrator

Report Prepared By: Laurie J. McCulloch

Phone: 503-229-5769

Date Prepared: January 10, 2000

LJM:ljm

DIVISION 163

REGISTRATION AND LICENSING REQUIREMENTS FOR HEATING OIL TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS PROVIDING HEATING OIL TANK SERVICES

340-163-0005
Authority, Purpose, and Scope

(1) These rules are promulgated in accordance with and under the authority of ORS 466.706 and 466.750.

(2) The purpose of these rules is to provide for the regulation of companiesfirms and individualspersons who perform heating oil tank services for underground heating oil tanks.cleanup soil contamination resulting from spills and releases of heating oil from heating oil tanks utilizing the soil matrix standards in OAR 340-122-0305 to 340-122-0360. These rules establish standards for:

(a) Licensing of firms performing heating oil tank soil matrix cleanup services for heating oil tanks;

(b) Examination, qualification and licensing of individuals who supervise heating oil tank soil matrix cleanup services for heating oil tanks; and

(c) Administration and enforcement of these rules by the Department.

(3) Scope:

(a) OAR 340-163-0005 through 340-163-0150 appliesThese rules apply to cleanup by any individual or firm who performs or offers to perform heating oil tank services.person of soil contamination resulting from spills and releases of heating oil from heating oil tanks;

(b) OAR 340-163-0005 through 340-163-0150 do not apply to services performed by the tank owner, property owner or permittee.

(4) Service Pproviders and Ssupervisors licensed under this Division are not licensed to perform work under:

(a) OAR Chapter 340, Division 162 — Registration and Licensing Requirements for Underground Storage Tank Soil Matrix Cleanup Service Providers and Supervisors.; or

(b) OAR Chapter 340, Division 160.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0010
Definitions

As used in these rulesthis Division, the following definitions apply:

(1) "Commission" means the Environmental Quality Commission.

(2) "Confirmed Release" means petroleum contamination observed in soil or groundwater as a sheen, stain, or petroleum odor, or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December, 1996), or analytical results of 50 mg/kg or greater for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996),

or detected in groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218.

(3) "Corrective Action" has the same meaning as given in ORS 466.706.

(4) "Decommissioning" means to remove an underground heating oil tank from operation by an approved method specified in OAR 340-177-0025, such as abandonment in place (e.g. cleaning and filling with an inert material) or by removal from the ground.

(2) "Closure" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from, the ground.

(35) "Department" means the Oregon Department of Environmental Quality.

(4) "Director" means the Director of the Oregon Department of Environmental Quality.

(5) "Facility" means the location at which heating oil tanks are in place or will be placed. A facility encompasses the entire property contiguous to the heating oil tanks that is associated with the use of the tanks.

(6) "Fee" means a fixed charge or service charge.

(7) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in the performance of heating oil tank services.

(8) "Heating Oil" means petroleum that is No. 1, No. 2, No. 4 —- heavy, No. 5 - light, No. 5 —- heavy, and No. 6 - technical grades of fuel oil: other residual fuel oils (including Navy Special Fuel oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils.

(9) "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.

(10) "Heating Oil Tank Services" means the decommissioning of a heating oil tank or the performance of corrective action necessary as a result of a release of oil from an underground heating oil tank.

(101) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of heating oil tank services has met the Department's experience and qualification requirements to offer or perform such services related to heating oil tanks and has been issued a license by the Department to perform those services.

(11) "Permittee", as used in this section, has the meaning set forth in ORS 466.706(9).

(12) "Soil Matrix Cleanup" means soil cleanup action taken to comply with OAR 340-122-0305 through 340-122-0360.

(12) "Responsible Person" means "owner or operator" as defined in ORS 465.200(19) and any other person liable for or voluntarily undertaking remediation under ORS 465.200, and is used synonymously with the term "tank owner" in this Division.

(13) "Service Provider" is a firm licensed to offer and perform heating oil tank services on underground heating oil tanks in Oregon.

(134) "Supervisor" means a licensed individual operating alone or employed by a contractor and who is charged with the responsibility tofor directing and overseeing the performance of heating oil tank services at a facilitytank site.

(14) "Tank" means heating oil tank.

(15) "Tank Services" include but are not limited to soil cleanup of heating oil.

(16) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on heating oil tanks in Oregon.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & ORS 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0020
General Provisions

(1) Effective March 15, 2000After January 1, 1991, no firm shallmay perform or offer to perform heating oil tank soil matrix cleanup services without first having obtained a Hheating Ooil Ttank Soil Matrix Cleanup Sservice Pprovider license from the Department. Such services include, but are not limited to, site assessments on active or inactive heating oil tanks, decommissioning and cleanup.

(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.

(32) Any Heating Oil Tank Soil Matrix Cleanup Sservice Pprovider licensed or certified by the Department under the provisions of these rules shallmust comply with the appropriate provisions of:

(a) Comply with the appropriate provisions of OAR Chapter 340, Division 163340-163-0005 through 340-163-0150;

(b) Comply with the appropriate provisions of OAR 340-122-03205 through 340-122-03635;

(c) OAR Chapter 340, Division 177; and

(d) Any other federal, state, or local regulations applicable to underground heating oil tanks.

(3) A service provider must:

(a) Certify that heating oil tank services have been conducted in compliance with all applicable regulations in accordance with OAR 340-163-0060;

(b) Hold and continuously maintain a valid certificate of registration with the Oregon Construction Contractors Board as required by their regulations;

(c) Hold and continuously maintain insurance in accordance with OAR 340-163-0050;

(d) Provide proof of current license upon request by Department staff or the tank owner at all times a service provider is performing heating oil tank services at a tank site; and

(ce) Maintain a current address on file with the Department.; and Mail sent to the service provider that is returned to the Department by the U.S. Postal Service as undeliverable may be considered a failure to comply.

(4) A service provider or supervisor must report a confirmed release of petroleum from an underground heating oil tank to the Department within 72-hours of discovery. This report may be made by telephone or in writing (e.g. facsimile) on a form provided by the Department. The Department will assign a "site identification" or "log" number for each release, which will serve as confirmation of reporting.

(5) In the event a service provider no longer employs a supervisor, the service provider must stop work on any heating oil project until a supervisor is again employed by the service provider.

(d) Perform soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(4) A firm licensed to perform heating oil tank soil matrix cleanup services must submit a checklist to the Department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.

(56) After January 1, 1991Effective March 15, 2000, a licensed Hheating Oil Ttank Soil Matrix Cleanup Services Ssupervisor shallmust be present at a tank site when the following tasks are being performed.:

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) When any tanks or lines are permanently closed by removal from the ground or filled in place as a result of a suspected or confirmed releaseAfter a tank has been cleaned: when examined for holes and leaks and is filled with an inert material, or when the tank is physically removed from the ground;

(c) When all soil and/or water samples are collected and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination; or

(e) During removal from the open excavation or disposal ofWhen any free product or groundwater is removed from an open excavation or disposed.; and

(7) Licensed supervisors must maintain a current address with the Department at all times during the license period. Mail sent to the individual that is returned to the Department by the U.S. Postal Service as undeliverable may be considered a failure to comply.

(8) Licensed supervisors must provide proof of current licensing upon request by Department staff or by the tank owner.

(6) After January 1, 1991 Service Providers shall not backfill or close a soil cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0025

Types of Licenses

(1) The Department may issue the following types of licenses:

(a) Heating Oil Tank Soil Matrix Cleanup Services Provider;

(b) Heating Oil Tank Soil Matrix Cleanup Supervisor.

(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0030

Licensing ofRequirements for Heating Oil Tank Soil Matrix Cleanup Services Providers

(1) After September 1, 1990, firms providing Heating Oil Tank Soil Matrix Cleanup services may apply for Heating Oil Tank Soil Matrix Cleanup Services Provider license from the Department.

(21) Licensing shall be accomplished by:The Department will issue a license for heating oil tank services to firms who complete

(a) Completing and submit a license application provided byto the Department; that includes, but is not limited to, the following information: or

(b) Submitting the following information to the Department:

(Aa) The name of the firm or assumed business name as registered with the Oregon Corporation Division, and address and telephone number of the firm;

(b) The names and addresses of all principals of the firm;

(B) The nature of the services to be offered;

(c) A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm;

(Dc) Identifying tThe names and supervisor license numbers and expiration dates of all employees or principals responsible for on-site project supervision; and

(d) Proof of insurance as required by OAR 340-163-0050(3);

(e) Current Construction Contractors Board registration number;

(f) General information about any underground storage tank work (regulated or heating oil) performed in Oregon or any other state(s) within the previous year as applicable; and

(Eg) Remitting tThe required license fee.

(32) The Department will review the application for completeness. If the application is incomplete, the Department shallwill notify the applicant by telephone or in writing of the deficiencies.

(4) The Department shall deny, in writing, a license to a Heating Oil Tank Soil Matrix Cleanup Services Provider who has not satisfied the license application requirements.

(53) Upon approval, tThe Department shallwill issue a license to the applicant after the application is approved. that is valid for twelve (12) months from the date of issue.

(6) The Department shall grant a license for a period of twenty-four (24) months.

(74) Renewals:

(a) License renewals must be applied for and will be issued in the same manner as is required for an initial license.; except:

(ba) The complete renewal application shallmust be submitted to the Department no later than 30 days prior to the license expiration date.;

(b) The application must include a list of all heating oil tank site assessments and certified decommissioning and cleanup projects worked on during the previous twelve (12) month period. The list must include, but is not limited to, the name of the property owner, address of the property, date(s) the services were performed, and the type of services performed (i.e. site assessment, decommissioning, cleanup).

(c) The renewal license period will be for twelve (12) months from the expiration date of the previous license issued. If the current license lapses for any reason, the service provider may not perform or offer to perform heating oil tank services during any time between the expiration date and issuance of the renewal license.

(5) If a firm changes its business name, but there are no changes in the corporate structure (i.e. all principals remain the same), a request for a business name change and re-issuance of the service provider license must be made in writing and be accompanied by the required fee for name changes. A copy of the certificate of insurance with the new corporate name must be included. The license period will remain the same as issued to the previous business name.

(6) If the Construction Contractors Board requires that a firm re-register as a new entity, the service provider license issued by the Department will become invalid and the firm must reapply as a new applicant.

(8) The Department may suspend or revoke a license if the tank services provider:

(a) Fraudulently obtains or attempts to obtain a license;

(b) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission;

(c) Fails to meet any applicable state or federal standard relating to the service performed under the license;

(d) Fails to employ and designate a licensed supervisor for each project.

(9) A Heating Oil Tank Soil Matrix Cleanup Services Provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

(10) In the event a Heating Oil Tank Soil Matrix Cleanup Services provider no longer employs a licensed supervisor the services provider must stop work on any heating oil soil matrix cleanup. Work shall not start until a licensed Heating Oil Tank Soil Matrix Cleanup Supervisor is again employed by the provider and written notice of the hiring of a licensed Heating Oil Tank Soil Matrix Supervisor is received by the Department.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0035

Licensing and Examination Requirements for Heating Oil Tank Soil Matrix Cleanup Supervisors Examination and Licensing

(1) To obtain a license from the Department to supervise heating oil tank soil matrix cleanup services from a heating oil tank, aAn individual must take and pass a qualifying examination approved by the Department to be eligible to apply for a license to supervise heating oil tank services when employed by a licensed heating oil tank service provider. The Department may use examinations administered by a nationally recognized underground storage tank examination firm or organization.

(2) If no national examination system is available or if an Oregon-specific testing method is determined necessary by the Department, the Department may develop an examination process that may include field tests in addition to or in lieu of a written examination, that is specific to heating oil tank services, is administered by the Department, and that includes reimbursement of an amount sufficient to cover the costs of administering the examination.

(3) The Department will issue a license for heating oil tank site assessment, decommissioning and cleanup activities to individuals who complete and submit a license

application to the Department that includes, but is not limited to, the following information:

(a) Name and address of the individual;

(b) Name, address and license number of the service provider that the individual is employed by or is regularly associated with;

(c) Original or clearly legible copy of documentation that the applicant has successfully passed the appropriate supervisor examination; and

(d) The required fee.

(2) Applications for Heating Oil Tank Soil Matrix Supervisor Licenses — General Requirements:

(a4) Applications must be submitted to the Department within 30 days of passing the qualifying examination;.

(5) The Department will review the application for completeness. If the application is incomplete, the applicant will be notified of deficiencies by telephone or in writing.

(6) After the application is approved, the Department will issue a supervisor license to the applicant that is valid for twenty-four (24) months from the date of issue. The license is in the form of an identification card that includes the name of the individual, license number and expiration date.

(b) Application shall be submitted on forms provided by the Department and shall be accompanied by the appropriate fee;

(c) The application to be a Licensed Heating Oil Tank Soil Matrix Supervisor shall include:

(A) Documentation that the applicant has successfully passed the heating oil tank soil matrix Supervisor examination;

(B) Any additional information that the Department may require.

(3) A license is valid for a period of 24 months after the date of issue.

(47) License renewals must be applied for and will be issued in the same manner as the application for the original license, including re-examination., except:

(a) The renewal license period will be for twenty-four (24) months from the expiration date of the previous license issued. If the current license lapses for any reason, the individual may not perform or offer to perform heating oil tank supervisory services during any time between the expiration date and issuance of the renewal license.

(8) Until July 1, 2000, or a later date determined by the Department, applicants for a heating oil tank supervisor license may use the Oregon Soil Matrix Cleanup examination to meet the requirements of OAR 340-163-0035(1). After that date, the Department will designate a heating-oil-specific examination as the qualifying examination. The Department may make a determination that more than one examination or license category is necessary.

(5) Suspension or Revocation:

(a) The Department may suspend or revoke a Heating Oil Tank Soil Matrix Supervisor's license for failure to comply with any state or federal rule or regulation pertaining to the cleanup of soil contamination from a heating oil tank;

(b) If a Heating Oil Tank Soil Matrix Cleanup Supervisor's license is revoked, an individual may not apply for another supervisor license prior to 90 days after the revocation date.

(6) Upon issuance of a Heating Oil Tank Soil Matrix Cleanup Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.

(7) The Supervisor's license identification card shall be available for inspection at each site.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

Examination Schedule

(1) At least once prior to November 1, 1990, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to became licensed to supervise soil matrix cleanups from heating oil tanks.

(2) Not less than 30 days prior to offering an examination the Department shall prepare and make available to interested persons, a study guide which may include sample examination questions.

(3) The Department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90

340-163-0050

Service Provider Insurance Requirements

(1) Any firm applying for a service provider license to perform heating oil tank services must first obtain insurance coverage for errors-and-omissions or professional liability that will be used to pay for any additional corrective action necessary as a result of improper or inadequate site assessment, decommissioning or cleanup work. General liability insurance or pollution liability insurance are not acceptable substitutes for the insurance requirements.

(2) Insurance must be obtained in the amount of $500,000 per claim or per occurrence, with a total aggregate of $1,000,000, from an insurance company authorized to do business in Oregon. Coverage must remain continuous during the license period and until one (1) year after a firm has ceased to perform heating oil tank services in Oregon.

(3) Proof of insurance in the form of a standard insurance policy certificate must be provided to the Department at time of license application and renewal. The certificate of insurance must include the following:

(a) The name of the insurance company, policy number, effective dates of coverage, coverage amounts, deductible amount, name of all insured entities, agent's name, address and telephone number; and

(b) A 30-day cancellation clause that provides notice to the Department if the insurance is cancelled. Notices must be sent to: Department of Environmental Quality, Underground Storage Tank Program, 811 S.W. Sixth Avenue, Portland, Oregon, 97204.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0060
Certification of Work Performed

(1) A licensed service provider must certify to the Department that heating oil tank services have been performed in compliance with applicable regulations for each decommissioning or cleanup report submitted to the Department. Categories for certification are:

(a) Voluntary Decommissioning;

(b) Soil Matrix Cleanup;

(c) Heating Oil Tank Generic Remedy Cleanup; and

(d) Risk-Based Cleanup with a Corrective Action Plan.

(2) Each individual decommissioning or cleanup certification must contain the following elements:

(a) Statement of compliance that includes the following declaration by the business owner or senior corporate officer for the service provider: "Based on information and belief formed after reasonable inquiry, the heating oil tank services performed under this certification were conducted in compliance with all applicable federal, state and local laws.";

(b) Affirmation of insurance coverage as required by OAR 340-163-0050;

(c) Signature of service provider business owner or senior corporate officer;

(d) Technical report required by OAR 340-122-0205 to 340-122-0360 or OAR Chapter 340, Division 177 as appropriate, signed by the licensed supervisor responsible for the on-site supervision of the project;

(e) A list of technical standards and regulations covered by the certificate provided for the specific category, on a checklist provided by the Department; and

(f) The cost of each certified project, for the purpose of collecting general information by certification category. The service provider must provide information on a separate form provided by the Department, that includes the certification category, description of the complexity of the project, date the project was completed, name of the county the project is located in, and the project cost.

(3) Project certifications must be included with reports submitted by the tank owner, or service provider on owner's behalf, and accompanied by the required registration fee in accordance with OAR 340-177-0095.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0070
Department Review of Certified Reports

(1) The Department may review and verify the accuracy of certified decommissioning and cleanup reports using a variety of standard compliance verification methods, including, but not limited to:

(a) Review of certified reports submitted for Department approval;

(b) Field inspection of heating oil tank services at tank sites; and

(c) Inspection of records, equipment, or materials held or temporarily stored at the service provider's place of business or storage facility.

(2) The Department will document the result of any report review conducted in writing, which includes a brief summary of the report review or inspection results. This information will be provided to both the tank owner and the certifying service provider.

(3) Any enforcement actions taken as a result of a report review will be conducted in accordance with the applicable requirements of OAR Chapter 340, Division 12.

(4) The Department may reject any decommissioning or cleanup report that has been certified as in compliance with all applicable regulations by a service provider if, but not limited to, any of the following conditions exist:

(a) There is a lack of information or data included with the certified report to support the finding of compliance;

(b) The Department determines that the compliance determination is not accurate based on the information submitted;

(c) Some or all of the supporting documentation does not accurately reflect conditions at the tank site;

(d) Information obtained during a site inspection by the Department may impact the validity of the certification results; or

(e) There is a violation of applicable regulations that has or potentially could impact the validity of the certification results.

(5) For any rejected certified report, the Department may require the service provider or their insurance policy to take specific corrective action(s) that may include additional work at the tank site, including, but not limited to, additional sampling and analysis, contaminated soil removal, or removal of the heating oil tank. Completion of any required additional work must be coordinated with the property owner.

(6) For purposes of determining report certification accuracy, any employee or authorized representative of the Department may enter the tank site or service provider facility at any reasonable time to interview persons, inspect equipment and site conditions, collect samples, take still or video pictures, conduct an investigation, or review and copy records.

(7) To assist the Department in scheduling inspections, service providers must provide information regarding specific projects in progress on any specific day or days upon request by the Department.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706
Hist.: New

340-163-0110
License Denial, Suspension, Revocation

(1) The Department may deny issuance of, suspend or revoke a license for fraud or deceit if the service provider or supervisor:

(a) Fraudulently obtains or attempts to obtain a license; or

(b) Knowingly signs required forms containing false information.

(2) The Department may also deny issuance of, suspend or revoke a license if the service provider or supervisor fails to comply with any applicable local, state or federal regulations pertaining to the performance of heating oil tank services or demonstrates negligence or incompetence, including but not limited to situations where the service provider or supervisor:

(a) Fails to employ and designate a licensed supervisor for each project;

(b) Fails to maintain required insurance;

(c) Fails to maintain appropriate registration with the Oregon Construction Contractors Board;

(d) Fails to resolve heating oil tank compliance related violations in accordance with an enforcement schedule or order issued by the Department;

(e) Fails to make corrections specified by the Department as the result of the Department's rejection of a decommissioning or cleanup report certified by the service provider;

(f) Fails to correct deficiencies noted by the Department for an incomplete license application;

(g) Fails to maintain a current address with the Department; or

(h) Fails at any time to satisfy the requirements for a license.

(3) A service provider or supervisor who has an application denied or license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the denial, suspension, or revocation has been resolved.

(4) Procedures for license denial, suspension, and revocation will be conducted in accordance with the appropriate provisions of ORS 183.310 to 183.550 and OAR Chapter 340, Division 12.

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: new

340-163-0150
Fees

(1) Fees shall be assessed to provide revenues to operate the heating oil tank soil matrix cleanup services licensing program. Fees are assessed for the following:

(a) Heating Oil Tank Soil Matrix Cleanup Service Provider;

(b) Heating Oil Tank Soil Matrix Cleanup Supervisors Examination;

(c) Heating Oil Tank Soil Matrix Cleanup Supervisors License;

(d) Heating Oil Tank Soil Matrix Examination Study Guides.

(21) Heating oil tank soil matrix cleanup service providers shallmust pay a non-refundable license application fee of $100750 for a twenty-four (24)twelve (12) month license.

(3) Individuals taking the Heating Oil Tank Soil Matrix Cleanup Supervisor licensing examination shall pay a non-refundable examination fee of $25.

(42) Individuals seeking to obtain a Heating Ooil Ttank Soil Matrix Cleanup Ssupervisor's license shallmust pay a non-refundable license application fee of $25150 for a two yeartwenty-four (24) month license.

(3) Supervisors taking qualifying examinations administered by the Department must pay an examination fee equal to the cost of administering the examination.

(54) Examination study guides shallwill be made available to the public for the cost of production. Copyrighted reference materials, which may have separate costs charged by the specific organization, are not included with study guides.

(65) Replacement licenses, including name change requests, will be provided by the Department for a fee of $10.

Stat. Auth.: ORS 465.200 - ORS 465.320 & ORS 466.706 - ORS 466.995
Stats. Implemented: ORS 466.706 & 466.750
Hist.: DEQ 28-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91

DIVISION 177

~~RESIDENTIAL~~ HEATING OIL UNDERGROUND STORAGE TANKS

340-177-0001

Purpose and Scope

~~340-177-0001~~ (1) This Division specifies requirements for the ~~remediation~~cleanup of releases of petroleum from underground ~~residential~~ heating oil tanks, technical standards ~~and~~ for the ~~disbursement of grants to property owners (homeowners) who~~ voluntar~~ily~~ decommissioning of~~an unused~~ underground ~~residential~~ heating oil tanks, and requirements for submittal of technical reports that have been certified by licensed service providers.

Stat. Auth.: ORS 465.200 - 465.320, 466.706 and ORS 466.850 - 466.870
Stats. Impl: ORS 465.400, 465.405, 466.706, 466.855 and 466.870
Hist.: DEQ 25-1998, f. & cert. ef. 11-2-98; DEQ 29-1998, f. & cert. ef. 12-22-98

340-177-0005

Definitions

As used in this Division, the following definitions apply:

(1) "Above-Ground Release" means any release to the land surface or to surface water from the above-ground portion of a residential heating oil tank system and releases associated with overfills and transfer operations during heating oil deliveries to or dispensing from a residential heating oil tank system.

(2) "Below-Ground Release" means any release to the land subsurface having concentrations detected by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996), or analytical results of 50 mg/kg or greater for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996), or any release to groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218. This includes but is not limited to releases from the below-ground portion of a residential heating oil tank and releases to the land subsurface or groundwater associated with overfills and transfer operations as the heating oil is delivered to or dispensed from a residential heating oil tank system.

(3) "Confirmed Release" means petroleum contamination observed in soil or groundwater as a sheen, stain, or petroleum odor, or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996), or analytical results of 50 mg/kg or greater for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996), or detected in groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218.

(4) "Corrective Action" has the same meaning as given in ORS 466.706.

(45) "Decommissioning" ~~or "Removal"~~ means to remove an underground storage tank from operation by an approved method specified in OAR 340-177-0025, such as abandonment in place (e.g. cleaning and filling with an inert material) or by removal from the ground.

(~~5~~6) "Department" means the Oregon Department of Environmental Quality.

(~~6~~7) "Excavation Zone" means an area containing a ~~residential~~ heating oil tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the ~~residential~~ heating oil tank system is placed at the time of installation.

(~~7~~8) "Free Product" means petroleum in the non-aqueous phase (e.g., liquid not dissolved in water).

(9) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(~~8~~10) "Heating Oil" means petroleum that is No. 1, No. 2, No. 4-Heavy, No. 5-Light, No. 5-Heavy, or No. 6-Technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); or other fuels when used as substitutes for one of these fuel oils.

(~~9~~11) "Heating Oil Tank" means any one or combination of 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.

(12) "Heating Oil Tank Services" means the decommissioning of a heating oil tank or the performance of corrective action necessary as a result of a release of oil from an underground heating oil tank.

~~(10) "Household Income" means the combined total gross annual income of all persons shown in the county deed records as owners of the property where a residential heating oil tank has been or will be decommissioned. The annual period is for the most recent tax year that complete tax forms are available, in reference to both the date of tank decommissioning and date of grant application.~~

(1~~1~~3) "Petroleum" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels, and any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. "Petroleum" does not include any substance identified as a hazardous waste under 40 CFR Part 261.

(1~~2~~4) "Remediation" or "Remedial Measures" means "Remedial Action" as defined in ORS 465.200(22) and "Removal" as defined by ORS 465.200(24)~~.~~, and is used synonymously with the term "cleanup" in this Division.

~~(13) "Residential Heating Oil Tank" is a heating oil tank located on property used primarily for single family dwelling purposes.~~

(1~~4~~5) "Responsible Person" means "owner or operator" as defined in ORS 465.200(19) and any other person liable for or voluntarily undertaking remediation under ORS 465.200, and is used synonymously with the term "tank owner" in this Division.

(1~~5~~6) "Service Provider" is a ~~means an individual or~~ firm licensed ~~by the Department~~ to offer and perform ~~Matrix Cleanup~~heating oil tank services on underground heating oil tanks in Oregon ~~who is hired by a person responsible for a residential heating oil tank to provide such services~~.

(17) "Supervisor" means a licensed individual who is charged with the responsibility for directing and overseeing the performance of heating oil tank services at a tank site.

Stat. Auth.: ORS 465.200 - 465.420, ORS 466.706 and ORS 466.850 - 466.870
Stats. Implemented: ORS 465.200, 465.400, 466.706, 466.855 and 466.870
Hist.: DEQ 25-1998, f. & cert. ef. 11-2-98; DEQ 29-1998, f. & cert. ef. 12-22-98

340-177-0025
Decommissioning Standards and Reporting Requirements

(1) Any responsible person for property where a heating oil tank is located who voluntarily decommissions the tank, or a licensed service provider contracted to perform the work, must conduct the work in accordance with the standards set forth in this section and insure that appropriate safety precautions are maintained at all times.

(2) The decommissioning must be conducted using a national code of practice, such as, "Removal and Disposal of Used Underground Petroleum Storage Tanks", American Petroleum Institute (API) 1604, (March, 1996) or Uniform Fire Code Article 79. The specific procedures used must be stated in required reports. The following actions must be taken in all cases:

(a) The tank and associated piping must be cleaned as thoroughly as possible to the maximum extent practicable of all product, sludge and/or water rinsate. This material must be recycled or disposed of in accordance with all local, state, and federal requirements;

(b) The cleaned, empty tank must be: removed from the ground and disposed or recycled appropriately, or the tank must be completely filled in-place with a non-reactive (i.e. inert) solid material that is compacted in the tank and that is appropriate for individual site conditions; and

(c) A site assessment must be conducted to determine if a release has occurred using the following procedures:

(A) If the tank is removed during decommissioning: collect two soil samples, one from each end of the excavation. Each sample must be collected at least six inches in native soil below the bottom of the excavation, but no more than one foot below the bottom of the former heating oil tank.

(B) If the tank is decommissioned in-place: collect two soil samples, one from each end of the tank, no more than six inches from the end of the tank. Each sample must be collected at least one foot, but no more than two feet, below the bottom of the tank.

(C) If there are obvious areas of contamination based on visual observations or odors, samples must be collected from these areas of worst contamination, in addition to (A) or (B) of this subsection.

(d) Soil samples must be collected in accordance with OAR 340-122-0340 and 340-122-0345 and analyzed for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996) in accordance with OAR 340-122-0218.

(e) If groundwater is encountered during soil boring or in the tank excavation, a water sample must be collected. The sample must be collected in accordance with OAR 340-122-0340 and 340-122-0345 and analyzed for benzene, toluene, ethylbenzene, and total xylenes (BTEX) and polynuclear aromatic hydrocarbons (PAHs) in accordance with OAR 340-122-0340(4)(B) and (C).

(f) If contamination is detected that exceeds confirmed release levels as defined in OAR 340-177-0005(3), the decommissioning is now considered to be a cleanup project

instead of a decommissioning project. OAR 340-177-0055 outlines reporting and cleanup project requirements.

(3) A report documenting the actions taken must accompany any certified decommissioning report and request for Department approval in accordance with OAR 340-177-0095. The report must contain the following information:

(a) Name of property owner and address of property;

(b) Name of the licensed service provider responsible for the project, including license number and expiration date;

(c) Name, date and signature of the person preparing the report;

(d) Information about the decommissioned tank, including approximate tank size, amount of product/sludge removed from the tank, reference name of the national code of practice procedure followed during decommissioning, and the amount and type of fill material used if tank was decommissioned in-place;

(e) A site map, drawn approximately to scale, showing the location of all buildings on the property and on adjacent properties, and location of the heating oil tank;

(f) A sketch of the site that clearly shows all of the sample locations and depths and identifies each location with a unique sample identification code;

(g) Copies of chain-of-custody forms for all soil and water samples collected, which forms include, but are not limited to: the date, time and location of the sample collection; a unique sample identification number; the name of the person collecting the sample; any unusual or unexpected problems encountered during the sample collection which may have affected the sample integrity;

(h) Copies of all laboratory data reports;

(i) Copies of all receipts or permits related to the disposal of free product, contaminated rinsate water, or decommissioned tanks and piping;

(j) A summary table of the concentrations measured for all samples;

(k) In cases where groundwater was present in the tank excavation zone, a summary of the data collected; and

(l) Any other relevant information that adds clarity to the specifics of the individual decommissioning project, such as photographs taken during tank cleaning, removal, and sample collection activities.

Stat. Auth.: ORS 466.706
Stats. Implemented: ORS 466.706
Hist.: New

~~**340-177-0050**~~
~~**Decommissioning Grants, General Conditions**~~

~~(1) Any person owning property where a residential heating oil tank is located may be eligible for a heating oil tank decommissioning grant pursuant to OAR 340-177-0060 upon meeting the provisions of OAR 340-177-0070.~~

~~(2) The heating oil tank decommissioning work must have been performed after October 4, 1997.~~

~~(3) Any person awarded a grant for a residential heating oil tank that was decommissioned by filling in place must record a deed notice of the presence of the tank in the property deed in the county of record. Documentation of the recording must be submitted to the Department, in accordance with county requirements or on a form provided by the Department, before actual grant disbursement.~~

~~Stat. Auth.: ORS 466.850 - 466.870~~
~~Stats. Implemented: ORS 466.870~~
~~Hist.: DEQ 29-1998, f. & cert.ef. 12-22-98~~

~~340-177-0060~~
~~Decommissioning Grants, Grant Amounts~~

~~(1) Subject to subsections 2 and 3 of this section, the Department will award heating oil tank decommissioning grants in the following amounts:~~

~~(a) for annual household income less than $35,000 the grant amount is $750;~~

~~(b) for annual household income between $35,000 and $75,000 the grant amount is $500; and~~

~~(c) for annual household income more than $75,000 the grant amount is $250.~~

~~(2) Subject to subsection 3 of this section, the Department will award decommissioning grants on a first come, first served basis, within a reasonable time for application approval and check issuance, dependent upon receipt of a complete application pursuant to OAR 340-177-0070 and according to the following priority:~~

~~(a) Until March 1, 1999 to low income (less than $35,000 annually) qualifying property owners who were non-funded Oil Heat Commission claimants;~~

~~(b) From March 1, 1999 to June 30, 1999 to any low income (less than $35,000 annually) qualifying property owners;~~

~~(c) From July 1, 1999 to September 30, 1999 to any qualifying property owners who were non-funded Oil Heat Commission claimants; and~~

~~(d) After October 1, 1999 to any qualifying property owners.~~

~~(3) The Department is obligated to pay grants only to the extent that it has received moneys and spending authority for heating oil tank decommissioning grants. Neither the Department nor the State of Oregon may incur any obligation or liability to pay heating oil tank decommissioning grants beyond moneys specifically allocated and authorized by the Legislative Assembly or Emergency Board for this express purpose.~~

~~(4) The Department may waive the priority schedule in subsection 2 of this section if sufficient funds are available to award grants in proportion to the number of actual or projected applications.~~

~~(5) The Department may pre-approve applicants for basic eligibility requirements if sufficient funds are available to make this provision feasible.~~

~~(a) Pre-approved status expires 60 days after date of issuance by the Department.~~

~~(6) The Department will promptly notify grant applicants of any additional information needed to process their application. The Department will notify applicants in writing if the provisions of OAR 340-177-0070 are not met or if there are other conditions impacting application status (e.g. ineligible, on hold pending additional information, etc.).~~

~~Stat. Auth.: ORS 466.850 - 466.870~~
~~Stats. Implemented: ORS 466.855 and 466.870~~
~~Hist.: DEQ 29-1998, f. & cert.ef. 12-22-98~~

~~340-177-0070~~
~~Decommissioning Grants, Eligibility Requirements and Conditions~~

(1) To receive a heating oil tank decommissioning grant, eligible property owners may submit an application on a form provided by the Department. Each applicant must provide the following information, unless otherwise directed by the Department:

(a) The name, mailing address and phone number of the owner (s) of the household;

(b) Social security number and full name of the grant applicant to whom a check will be
issued;

(c) To receive priority consideration pursuant to OAR 340-177-0060(2)(a) or (c), the Oil Heat Commission claim number must be provided, and this number must correspond to any lists of non-funded claims provided by the Oil Heat Commission to the Department;

(d) Evidence of annual household income as defined by OAR 340-177-0005 (10) by providing either:

(A) A copy of the Federal Income Tax Return(s) (page 1 and 2 of Form 1040 or equivalent without attachments) that shows the total household income for all owners of the property where the residential heating oil tank was/is located, or

(B) For a property owner not required to file a Federal Income Tax Return, a signed statement of that owner's total annual household income;

(e) A copy of a decommissioning report that meets the provisions of OAR 340-177-0080 that includes documentation that decommissioning work was performed after October 4, 1997; and

(f) If the heating oil tank was decommissioned in-place, a copy of the recorded deed notice in accordance with OAR 340-177-0050 (3).

Stat. Auth.: ORS 466.850 - 466.870
Stats. Implemented: ORS 466.870
Hist.: DEQ 29-1998, f. & cert.ef. 12-22-98

340-177-0080
Decommissioning Grant Reports, Conditions and Requirements

(1) Except as otherwise provided in subsections (2) and (3) of this section, to be eligible for a heating oil tank decommissioning grant, an applicant must submit a decommissioning report, either as a narrative report or on a form provided by the Department that includes the following:

(a) A statement that the work was performed by the tank owner or the name and license number of the Service Provider and Supervisor that performed the work;

(b) Copies of disposal receipts for any heating oil, sludge or other liquids or solids that were removed from inside the tank;

(c) If the tank was removed from the site, copies of disposal receipts for the heating oil tank, or if the tank was filled in place, a description of the material that was used to fill the tank;

(d) Results of a site assessment to determine the presence or absence of soil or groundwater contamination. The site assessment must include, at a minimum:

(A) Two soil samples, one collected from each end of the tank, unless otherwise approved by the Department. Each sample must be at least at the depth of the bottom of the tank, but no more than two feet below the bottom of the tank. If there are obvious areas of contamination based on visual observations or odors, samples must be collected

~~from these areas of contamination. The samples must be collected in accordance with OAR 340-122-0340 and 340-122-0345 and analyzed for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996) in accordance with OAR 340-122-0218, and~~

~~(B) If groundwater is encountered in the soil borings or the tank excavation, a water sample must be collected. The sample must be collected in accordance with OAR 340-122-0340 and 340-122-0345 and analyzed for BTEX and PAHs in accordance with OAR 340-122-0218; and~~

~~(c) If levels of contamination exceed confirmed release levels as defined in OAR 340-177-0005 (3), documentation that a release report was filed with the Department pursuant to OAR 340-177-0110 (1) (c).~~

~~(2) If a confirmed release has occurred, the remediation report required by OAR 340-177-0110 (5) may be substituted in lieu of OAR 340-177-0080 (1).~~

~~(3) The Department may waive one or more of the provisions of subsection (1) of this section for decommissioning work completed between October 4, 1997 and the effective date of these rules or as otherwise determined appropriate by the Department.~~
~~Stat. Auth.: ORS 466.850 - 466.870~~
~~Stats. Implemented: ORS 466.870~~
~~Hist.: DEQ 29-1998, f. & cert. ef. 12-22-98~~

340-177-0110055
~~Remediation~~Cleanup and Reporting Requirements

(1) Within 72 hours after a confirmed release of petroleum from an underground ~~residential~~ heating oil tank is identified, the ~~responsible person~~ licensed service provider or supervisor must report the release to the Department by telephone or in writing, in accordance with OAR 340-163-0020(4). The Department will assign a "site identification" or "log" number for each release, which will serve as confirmation of reporting. If work on the tank is being performed by the tank owner, the tank owner is responsible for the required notification to the Department.

(2) The responsible person must take the following initial abatement actions for any release which has or may result in a sheen on surface water or groundwater, any below-ground release, any above-ground release in excess of 25 gallons, or any above-ground release of less than 25 gallons if the responsible person is unable to contain or clean up the release within 24 hours:

(a) Take immediate action to prevent any further release of heating oil into the environment; and

(b) Identify and mitigate any fire or safety hazards posed by vapors or free product.~~;~~ ~~and~~

~~(c) Report the release to the Department by telephone. The Department will issue a "site identification or log number" for each release, which will serve as confirmation of reporting.~~

(~~2~~3) If groundwater is encountered at any time during release identification or ~~remediation~~cleanup, or if any fire or safety hazards are posed by vapors or free product that has migrated from the excavation zone, the Department must be notified immediately. The Department may require that additional investigation or ~~remediation~~cleanup be conducted before proceeding further with the requirements of

OAR 340-177-0110055(3) and (4). Any free product observed must be removed in accordance with the requirements of OAR 340-122-0235;

(34) The following actions must be taken for each release:

(a) Remove as much of the product as possible from the ~~residential~~ heating oil tank to prevent further release to the environment;

(b) Conduct a visual inspection of any above-ground release(s) or exposed below-ground release(s) and take actions necessary to prevent any further migration of the heating oil into surrounding soils and groundwater;

(c) Remedy any hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or ~~remediation~~cleanup. If ~~remediation~~cleanup includes treatment or disposal of contaminated soils, the responsible person and service provider must comply with all applicable state and local requirements. ~~Excavated contaminated soil shall be managed in accordance with solid waste regulations.~~Stock-piled contaminated soil must be placed on an impermeable material (e.g. visqueen) and covered and bermed to prevent run-off. Storage of contaminated soil longer than 30 days requires a solid waste letter of authorization permit from the Department and may be prohibited by local jurisdictions.; and

(d) Measure for the presence of a release where contamination is most likely to be found at the residential heating oil tank site. In selecting sample types, sample locations, and measurement methods, the responsible person or service provider must consider the nature of the stored substance, the type of back-fill material that is present, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release.

(45) Within forty-five days after the date a release from a ~~residential~~ heating oil tank is reported to the Department, the responsible person or service provider must submit a written initial ~~remediation~~cleanup report to the Department, if groundwater is encountered at any time during ~~remediation~~cleanup or during tank investigation, if any fire or safety hazards posed by vapors or free product have not yet been eliminated, or if ~~remediation~~cleanup at the site is not expected to begin until after forty-five days from the date the release is reported.

(a) The written report may be a narrative report or on a form provided by the Department, that adequately describes any and all actions taken in accordance with section (3) of this rule;

(b) The amount in gallons of heating oil removed and the name of the disposal or reuse location must be included in the report; and

(c) If ~~remediation~~cleanup has not been initiated within the first forty-five days after the release is discovered, a proposed schedule for ~~remediation~~cleanup of the release must be included in the report.

(56) Within sixty days of completing ~~remediation~~cleanup at a ~~residential~~ heating oil tank release site or within another longer period of time approved by the Department, the responsible person or service provider must submit to the Department, as a narrative report or on a form provided by the Department, a final ~~remediation~~cleanup report, which includes, as a minimum, the following information:

(a) A narrative section describing how the release was discovered, what initial measures were taken to control the spread of contamination, what was observed when the tank was removed from the pit (odor, sheen, stained soils, holes in tank or lines, etc.),

how the ~~remediation~~cleanup was done, how much contaminated soil was removed, what was done with the contaminated soil and the decommissioned tank and piping, who collected the samples, how the samples were collected, stored, and shipped to the laboratory, and any problems encountered during the ~~remediation~~cleanup or sample collection process;

(b) A description of all actions taken under OAR 340-177-0~~110~~055(3), as a narrative report or on a form provided by the Department;

(c) A site map, drawn approximately to scale, showing the location of all buildings on the property and on adjacent properties, and location of the ~~residential~~ heating oil tank;

~~(d) Photographs taken at the time of residential heating oil tank decommissioning and remediation;~~

(~~e~~d) A sketch of the site that clearly shows all of the sample locations and depths and identifies each location with a unique sample identification code;

(~~f~~e) Copies of chain-of-custody forms for all soil and water samples collected, which forms include, but are not limited to: the date, time and location of the sample collection; a unique sample identification number; the name of the person collecting the sample; ~~how the sample was collected;~~ and any unusual or unexpected problems encountered during the sample collection which may have affected the sample integrity;

(~~g~~f) Copies of all laboratory data reports;

(~~h~~g) Copies of all receipts or permits related to the disposal of free product, contaminated soil, contaminated water, or decommissioned tanks and piping;

(~~i~~h) A summary of the concentrations measured in the final round of samples from each sampling location;

(~~j~~i) In cases where groundwater was present in the tank excavation zone, a summary of the data collected ~~and the decision made by the Department in accordance with OAR 340-122-0355(3)~~;

(~~k~~j) The type of ~~remediation~~cleanup option selected and implemented under OAR 340-177-0~~120~~065(1); and

(~~l~~k) Any other relevant information that adds clarity to the specifics of the individual ~~remediation~~cleanup project~~.~~, such as photographs taken during tank cleaning, removal, and sample collection activities.

(6) All written reports and correspondence required to be submitted to the Department must include the following information:

(a) Name of property owner and address of property;

(b) Site identification or log number assigned to the property by the Department;

(c) Name of the service provider~~(s)~~ working on the project, ~~if any,~~ including license number and expiration date; and

(d) Name and signature of the person preparing the report.

~~(7) Upon review of the final residential heating oil tank remediation report the Department will:~~

~~(a) Provide the responsible person a written statement that, based upon information contained in the report, remediation at the site has been completed in accordance with these rules; or~~

~~(b) Request the responsible person to submit additional information or perform further investigation; or~~

~~(c) Request the responsible person to select and implement a different type of remediation option to adequately protect human health, safety, welfare and the environment.~~

Stat. Auth.: ORS 465.200 - ORS 465.400
Stats. Implemented: ORS 465.260
Hist.: DEQ 25-1998, f. & cert. ef. 11-2-98

340-177-0~~120~~065
~~Remediation~~Cleanup Options and Technical Requirements

(1) Depending on the extent of contamination and other relevant factors, the responsible person must determine which type of ~~remediation~~cleanup option is best suited for the release, using the following:

(a) Soil Matrix, OAR 340-122-0320 through 340-122-0360;

(b) Risk-Based, OAR 340-122-0244 and Corrective Action Plan, 340-122-0250; or

(c) Generic Remedy, as approved by the Department pursuant to OAR 340-122-0252 and as applicable to residential heating oil tank releases.

(2) For the specific ~~remediation~~cleanup option selected, additional written report requirements may be required and must be included as specified by the applicable regulations.

(3) Public participation will be provided by the Department as required for the specific ~~remediation~~cleanup option selected in section (1) of this rule.

(4) Sampling and analysis must be conducted in accordance with OAR 340-122-0218, unless otherwise specified by the ~~remediation~~cleanup option selected in section (1) of this rule.

(5) All samples must be collected in accordance with OAR 340-122-0340 and 340-122-0345.

(6) Evaluation of analytical results must be conducted in accordance with OAR 340-122-0355.

Stat. Auth.: ORS 465.200 - ORS 465.420
Stats. Implemented: ORS 465.260 & ORS 465.400
Hist.: DEQ 25-1998, f. & cert. ef. 11-2-98

340-177-0095
Certified Reports

(1) The tank owner, or service provider on owner's behalf, must submit certified project reports and receive approval from the Department for heating oil tank services performed at underground heating oil tank sites. This applies to the following projects:

(a) Decommissioning projects where the tank owner voluntarily requests Department approval; and

(b) All underground heating oil tank cleanup projects.

(2) Service providers licensed in accordance with Chapter 340, Division 163 are eligible to submit certified reports.

(3) Certified reports submitted to the Department must be accompanied by the required $50 filing fee, which is non-refundable.

(4) Certified reports must contain specific information as set forth below:

(a) For a voluntary decommissioning performed after March 15, 2000:

(A) The decommissioning report as required by OAR 340-177-0025 and decommissioning certification as required by OAR 340-163-0060.

(b) For a voluntary decommissioning performed prior to March 15, 2000:

(A) If the work was performed by a service provider licensed to perform soil matrix cleanup or UST decommissioning at the time the service was provided and two soil samples were collected in general conformity with the requirements of OAR 340-177-0025, a report that meets the general requirements of OAR 340-177-0025(3) is sufficient;

(B) If no soil samples were collected, or if the sampling work was performed by an unlicensed contractor, a licensed service provider must conduct a site assessment that meets the requirements of OAR 340-177-0025(2)(c) and must include a report that meets the requirements OAR 340-177-0025(3).

(c) For all heating oil tank cleanup projects, the cleanup certification provided in accordance with OAR 340-163-0060 must be accompanied by the specific report required by either or both OAR 340-177-0055(4) and (5) and OAR 340-177-0065(2) based on the cleanup option selected for the site.

(4) Department approval will be provided in the form of a letter to the tank owner, with a copy to the certifying service provider, that indicates the certified report has been registered and Department files on the project have been closed.

Stat. Auth.: ORS 466.706
Stats. Implemented: ORS 466.706
Hist.: New

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Heating Oil Tank Technical and Licensing Rule Revisions

ATTACHMENT B.1
Legal Notice of Hearing

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

DEQ – Waste Management & Cleanup Agency and Division	Chapter 340 Administrative Rules Chapter Number
Susan M. Greco Rules Coordinator	(503) 229-5213 Telephone
811 S.W. 6th Avenue, Portland, OR 97213 Address	

December 16, 1999	2:00 pm	777 Pearl St. Eugene, McNutt Rm	Karen White-Fallon
Hearing Date	Time	Location	Hearings Officer
December 21, 1999	7:00 pm	2020 SW 4th, Portland, 4th floor	Mitch Scheel
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?
✓ Yes ☐ No

RULEMAKING ACTION

ADOPT:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

OAR 340-177-0025, -0095

OAR 340-163-0050, -0060, -0070, -0110

AMEND:

OAR 340-177-0001, -0005

OAR 340-163-0005, -0010, -0020, -0030, -0035, -0150

REPEAL:

OAR 340-177-0050, -0060, -0070, -0080

OAR 340-163-0025, -0040

RENUMBER:
Secure approval of rule numbers with the Aministrative Rules Unit prior to filing.

From OAR 340-177-0120 to -0065

AMEND AND RENUMBER:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

From OAR 340-177-0110 to -0055

Stat. Auth.: ORS 465.200 – 465.455 & ORS 466.706, 466.750
Stats. Implemented: ORS ORS 466.706

RULE SUMMARY

OAR Chapter 340, Division 177 – Deletes provisions for grants to homeowners who voluntarily decommission a heating oil tank, adds technical standards for decommissioning heating oil tanks, and adds requirement to have heating oil tank decommissioning and cleanup projects certified by licensed service providers submitted to DEQ for approval with $50 filing fee (decommissioning voluntary).

OAR Chapter 340, Division 163 – Adds requirement for service providers to certify heating oil tank decommissioning and cleanup projects performed in accordance with regulations instead of DEQ, adds requirement for service providers to obtain errors-and-omissions insurance, statutorily increases license fees from $100 every two years to $750 every year for companies and from $25 to $150 every two years for individuals.

January 3, 2000
Last Day for Public Comment

Susan M. Greco, Rules Coordinator 11/15/99
Authorized Signer and Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Heating Oil Tank Technical and Licensing Rule Revisions

ATTACHMENT B.2
Fiscal and Economic Impact Statement

Introduction

The rule changes are a result of new statutory requirements that were established by the 1999 Legislative Assembly that affect heating oil tank owners and service providers. The changes are expected to provide greater environmental and consumer protection when heating oil tank services are performed. The new requirements that will have some type of fiscal impact are:

- addition of soil sampling for decommissioning
- requirement for errors-and-omission insurance for service providers
- increased license fees for service providers and supervisors
- change from cost recovery paid by tank owners for cleanup projects to a report filing fee
- statutorily specified license fees and report filing fees instead of rule-specified fees

In addition to assumptions outlined in the interest-group sections of this statement, these rules are based on the following assumptions:

- 3000 heating oil tanks decommissioned per year
  - number derived from assumption that the number of leaking tanks, which is known, is 50% of the number of tanks decommissioned
- 1500 leaking heating oil tanks per year
  - based on approximately 1250 releases reported as of 10/30/99
- average cost of decommissioning a tank is $750 without collection and analysis of two soil samples
  - decommissioning cost varies depending on size of tank, whether tank is removed or left in place, difficulty in accessing the site, groundwater level, travel time to job site, etc. Soil sample costs can also vary for many reasons and the $250 figure is presented as a reasonable average for collection and analysis for Total Petroleum Hydrocarbons (TPH)
- average cost of decommissioning a tank with soil samples is $1,000
- average cost of soil-only heating oil tank cleanup is $4000 (includes decommissioning)

General Public

Owners of underground heating oil tanks will receive the following direct benefits as a result of these rule changes:

- Currently, if a homeowner wants DEQ to review a cleanup project, he or she pays a $500 deposit to DEQ, then receives a refund of any amount remaining. The average DEQ cost recovery for a soil-only heating oil cleanup is $250. Under the proposed rules, the service provider would certify that the cleanup meets regulatory requirements. The DEQ filing fee is $50. This is an average direct savings of $200 per cleanup project.

- Currently, if additional work is determined necessary during DEQ's review, the tank owner has to pay for the additional work. Under the proposed rules, the service provider, not the tank owner, would be liable for the cost of any additional work if DEQ rejected a project that the service provider had certified. The service provider would be covered by the new insurance required.

Heating oil tank owners are likely to be directly impacted by additional decommissioning costs for sample collection and analysis. It is still not mandatory to decommission a tank. However, if the work is performed, it must meet technical standards and be performed by a licensed service provider. Submitting the certified decommissioning report to DEQ with the $50 filing fee is also voluntary. DEQ previously *recommended* sampling at the time of decommissioning, but will now *require* sampling. There will be an average increase of approximately $250 in the cost of decommissioning a tank, because more tank owners will perform a complete decommissioning that includes sampling. This cost includes sampling, analysis, and the requirement to secure the site and return several days later after obtaining sample results (e.g. before a tank is decommissioned in-place). Some tank owners will have higher sampling costs due to site-specific conditions which make the sampling more difficult.

Heating oil tank owners may also be indirectly impacted by increased costs as the expenses of some service providers rise to cover insurance and license fees. Refer to section on "small business" for additional information.

It is difficult to calculate the environmental protection achieved by the early detection of releases that would not be cleaned up if sampling was not conducted or if the work was performed by an unlicensed contractor who may not have appropriate technical training and insurance coverage for their customers. The benefit to property buyers of the greater assurance that the tank did not leak is also difficult to estimate, but could be assumed to be the cost of a cleanup (if a release is discovered at some future date) if the previous property owner cannot be located and required to pay.

When all factors are combined, tank owners are most likely to have a net decrease in costs as compared to projects completed prior to these proposed changes. Because of variations in cost from site to site, decrease cannot be quantified beyond the estimates provided here.

Small Business

There are about 250 service providers licensed by DEQ to provide a variety of services on underground tanks. The majority of these companies are small businesses with less than 50 employees, however, there are no provisions in statute or rule requiring service providers to supply information on the size of their workforce. Currently, companies are only required to be licensed to perform soil cleanups at heating oil tank sites. Under the proposed rules (and statute), they must be licensed to perform either decommissioning or cleanup under one new license. It is estimated that approximately 60 service providers will be licensed to provide heating oil tank services. These companies will be directly impacted by increased operating costs in the following ways:

- Increase in license fee from $100 for two year license to $750 per year = $700 per year
- Increase in supervisor license fee from $25 to $150 every two years = $62.50 per year per employee
  - assumes company pays the license fee for their employees
- $2,500 per year in insurance costs for each $250,000 in gross sales (the cleanup and decommissioning costs charged to tank owners) = 1% of cost ($10 for decommissioning and $40 for cleanup)

The amount of additional costs for each company will differ depending on whether it already carries errors-and-omissions insurance (many do), and the number of heating oil tank jobs it performs over a year's time. Obviously, the more jobs performed will reduce the increased costs that a company faces -- which may be passed on to the consumer (tank owner).

The average fiscal impact of insurance costs for the industry as a whole can be estimated on a per-job basis using the following example:

- 1500 cleanups at $4,000 per job = $6,000,000 in gross sales
- 1500 decommissionings at $1,000 per job = $1,500,000 in gross sales
- $7,500,000 total gross sales / $250,000 x $2,500 = $75,000 total industry cost
- $75,000 divided by 3,000 jobs per year = $25 average cost per job

The average fiscal impact of increased insurance costs on a single company is $2,500 ($75,000 / 60 service providers). To put this amount in further perspective, a company with $500,000 gross sales would pay $5,000 per year for errors-and-omissions insurance. This amount is added to the current $115,000 paid each year for all other types of insurance (pollution liability, general liability, employee insurance coverage, etc.). The $5,000 in increased insurance is approximately 4% of the total cost of insurance for the company.

The benefit to a company with $250,000 gross sales per year (e.g. 90 decommissionings and 40 cleanups) in retaining this insurance may be paid back if there is only one claim of $2,500 made per year (less than 1% of the total jobs performed).

Standardizing insurance, licensing, and sampling requirements will level the playing field for companies that, because of voluntary insurance and sampling procedures, previously had a competitive disadvantage from increased operating costs. Tank owners benefit by this standardization in that they now can review bids based on type and quality of work instead of bid prices that may not have covered the same services.

Large Business

Some – the exact number is indeterminate - of the approximately 250 licensed service providers may be large business owners. The absolute fiscal impact would be the same as for a small business, but it may reasonably assumed that the large business will have higher revenues and costs, so the proportional impact on a large business will be less than the same absolute impact would have on a small business.

Local Governments

The program would affect local government entities owning heating oil tanks the same as it would impact the general public who own tanks. The fiscal impact depends on the number and size of the tanks - more or bigger tanks would mean higher costs.

State Agencies

Department of Environmental Quality, 1999-2001 biennium, is expected to show the following increases:

- 4.0 FTE's (permanent positions)
- $540,000 Revenue ($300,000 in general funds and $240,000 from license and filing fees)
- $540,000 Expenses

Other Agencies

- Not applicable

Assumptions

Assumptions are set forth in the introduction and each specific section discussed.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For

Heating Oil Tank Technical and Licensing Rule Revisions

ATTACHMENT B.3

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purpose of the proposed rule changes are to implement provisions of House Bill 3107 passed by the 1999 Legislature.

The proposed rule changes would modify Oregon Administrative Rules (OAR) Chapter 340, Division 177 "Heating Oil Underground Storage Tanks" in the following ways:

- Adds technical standards for decommissioning heating oil tanks
- Requires heating oil tank cleanup projects to be certified by licensed service provider
- Retains voluntary decommissioning, but requires that a licensed service provider must certify the work and the work must meet technical standards, if tank owner wants DEQ to file and approve report
- Imposes $50 fee to have certified reports filed and approved by DEQ

The proposed rule changes would modify OAR Chapter 340, Division 163 "Licensing Requirements for Service Providers and Supervisors of Heating Oil Tank Services" in the following ways:

- Adds a requirement for heating oil tank service providers to carry errors-and-omissions insurance and be registered with Construction Contractors Board
- Requires service providers to certify that heating oil tank services for each project have been performed in accordance with rules
- Allows DEQ to audit work performed by service providers and reject certifications if necessary
- Increases license fees to $750 per year for companies and to $150 every two years for supervisors

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?**

   Yes____ No__✓__

   a. **If yes, identify existing program/rule/activity:**

   b. **If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?**

      Yes____ No_____ (if no, explain):

   c. **If no, apply the following criteria to the proposed rules.**

      1. Specifically referenced in the statewide planning goals; or

      2. Reasonably expected to have significant effects on
         a. resources, objectives or areas identified in the statewide planning goals, or
         b. present or future land uses identified in acknowledged comprehensive plans.

      In applying criterion 2 above, two guidelines should be applied to assess land use significance:
      - The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
      - A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

   In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

DEQ has evaluated the regulation of heating oil tanks through its State Agency Coordination Program and concluded that it is not a land use program or activity that significantly affects land use.

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Not applicable.

Signed by:

Laurie J. McCulloch	Roberta Young	11/10/1999
Underground Storage Tank Program Waste Management & Cleanup Division	Intergovernmental Coordinator	Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Heating Oil Tank Technical and Licensing Rule Revisions

Federal Requirements

ATTACHMENT B.4

Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

No. There are no federal requirements for heating oil tank standards or licensing of service providers.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

Not applicable.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

Not applicable.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

Not applicable.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

Not applicable.

6. Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

If federal requirements are established for underground heating oil tanks in the future, the proposed requirements are expected to be consistent, as they were developed to be similar to federal requirements for regulated tanks.

7. Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

Standardizing insurance, licensing, and sampling requirements will level the playing field for companies that, because of voluntary insurance and sampling procedures, previously had a competitive disadvantage from increased operating costs. Moreover, these requirements will ensure that contractors will have appropriate technical training and insurance coverage for their customers. Tank owners benefit by this standardization in that they now can review bids based on type and quality of work instead of bid prices that may not have covered the same services. Tank owners will be able to determine if work performed is adequate.

8. Would others face increased costs if a more stringent rule is not enacted?

In real estate transactions, it is important to have consistent requirements for soil testing. The proposed rules will set standards that were previously only "recommended practices". Buyers of property where a heating oil tank was decommissioned without sampling could have to pay for a cleanup in the future if contamination is discovered after they have purchased the property. Current owners who have work performed that needs to be re-done due to sub-standard work would pay for it themselves without the new requirements for service provider insurance.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

Not applicable.

10. Is demonstrated technology available to comply with the proposed requirement?

Yes. Decommissioning practices have been industry standards for many years.

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The requirement to sample when decommissioning a heating oil tank means that pollution can be detected earlier. This can potentially reduce the cost of a cleanup that could spread to groundwater or off-site if not detected.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: November 15, 1999

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements -
Heating Oil Tank Technical and Licensing Rule Revisions

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules and amend existing rules regarding heating oil tanks and licensing requirements for persons who perform heating oil tank services. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would modify Oregon Administrative Rules (OAR) Chapter 340, Division 177 "Heating Oil Underground Storage Tanks" in the following ways:

- Deletes rule language for providing grants to homeowners for decommissioning a residential heating oil tank
- Adds technical standards for decommissioning heating oil tanks
- Requires heating oil tank cleanup projects to be certified by licensed service provider
- Retains voluntary decommissioning, but requires that a licensed service provider must certify the work, and the work must meet technical standards, if tank owner wants DEQ to file and approve report
- Imposes $50 fee to have certified reports filed and approved by DEQ

This proposal would modify OAR Chapter 340, Division 163 "Licensing Requirements for Service Providers and Supervisors of Heating Oil Tank Services" in the following ways:

- Adds requirement for heating oil tank service providers to carry errors-and-omissions insurance and be registered with Construction Contractors Board
- Requires service providers to certify that heating oil tank services for each project have been performed in accordance with rules
- Allows DEQ to audit work performed by service providers and reject certifications under certain circumstances
- Requires insurance to cover cost of additional work required for rejected certifications
- Increases license fees for companies from $100 every two years to $750 per year
- Increases license fees for individuals from $25 to $150 every two years

The Department has the statutory authority to address this issue under ORS 466.706. These rules implement ORS 466.706.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

Attachment A The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)

Attachment B A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.

Attachment C Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.

Public Comment Period

You are invited to review these materials and present written comment on the proposed rule changes. Written comments must be presented to the Department by 5:00 p.m., January 3, 2000. Please forward all comments to Department of Environmental Quality, Attn: Laurie McCulloch, UST Program, 811 S.W. Sixth Avenue, Portland, Oregon, 97204, or hand deliver to the Department of Environmental Quality, 811 S.W. Sixth Avenue, 8th Floor reception desk between 8:00 a.m. and 5:00 p.m.

In accordance with ORS 183.335(13), no comments can be accepted after the close of the comment period. Thus, if you wish for your comments to be considered by the Department in the development of these rules, your comments **must** be received prior to the close of the comment period. Interested parties are encouraged to present their comments as early as possible prior to the close of the comment period to ensure adequate review and evaluation of the comments presented.

Public hearings have been scheduled as follows:

City	Date	Start Time	Meeting Location
Eugene	December 16	2:00 pm	City of Eugene, 777 Pearl St., McNutt Rm
Portland	December 21	7:00 pm	DEQ-NWR, 2020 SW 4th, 4th Floor

A brief informational presentation will made at the beginning of each hearing to give background information about rule changes.

What Happens After the Public Comment Period Closes

Following the close of the public comment period, the Department will prepare a report which summarizes the comments received. The Environmental Quality Commission (EQC) will receive a copy of this report.

The Department will review and evaluate the rulemaking proposal in light of all information received during the comment period. Following the review, the rules may be presented to the EQC as originally proposed or with modifications made in response to the public comments received.

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is February 11, 2000. This date may be delayed if needed to provide additional time for evaluation and response to the public comments received.

You will be notified of the time and place for final EQC action if you submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

The 1999 Legislature passed two bills that required rule changes to implement. Senate Bill 542 abolished the Oil Heat Commission end ended the funding program for grants to homeowners who voluntarily decommissioned a heating oil tank.

House Bill 3107 specifies requirements for licensing of companies and individuals who provide heating oil tank services. This includes requirements for certification of work performed, and insurance to cover errors and omissions. Decommissioning standards must be established (previously only "recommended practices" were available). The bill requires DEQ to set standards for tank owners who voluntarily choose to decommission a tank. DEQ will file certified reports for a $50 fee. DEQ will audit (i.e. review reports and conduct inspections) the work of licensed service providers and supervisors.

How was the rule developed?

A work group comprised of representatives for service providers, homeowners, environmental law practitioners, realtors, banking, utilities, Oregon Petroleum Marketing Association, insurance, and local government (fire, building) was established. This group met four times in September and October, 1999 to provide input on rule concepts and to review draft rules. DEQ consulted with the Construction Contractors Board to ensure that these rules do not duplicate other insurance requirements and to provide consistency in licensing requirements where feasible.

House Bill 3107, and to a lesser degree Senate Bill 542, were the primary documents used to formulate rule sections and language. Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon, 8th floor reception desk. The documents are available for review between 8:00 am and 5:00 pm Monday through Friday.

Whom does this rule affect including the public, regulated community and other agencies, and how does it affect these groups?

Heating oil tank owners – Tank owners receive added consumer protection through the requirement for licensed service providers to carry insurance. Tank decommissioning standards provide consistency in work performed and environmental protection through a site assessment for contamination. Service providers certify that the project was completed in compliance with the rules instead of DEQ. Tank owners can have decommissioning projects certified and filed with DEQ, when previously only cleanup projects could be approved. The $50 filing fee is less than the average $250 cost recovery amount needed for DEQ to review and approve projects.

Companies and individuals – Companies have added requirement for insurance, although many licensed service providers already carry errors-and-omissions insurance as good business practice. These rules require the company to certify that a project has been completed in compliance with applicable rules. The license fee increase from $100 every two years to $750 per year is significant to a company that only performs a few heating oil projects a year, but is not expected to be a hardship or add to tank owner costs for those companies that perform numerous projects. Licensing requirements for individuals who supervise heating oil projects are not greatly changed, except license fees are increased from $25 to $150 every two years.

Other agencies – There is no expected impact on other agencies. However, state and local government agencies such as fire protection and public works may be logical sources to distribute guidance information for tank owners. These rules are not intended to supersede existing local requirements. Any agency that owns an underground heating oil tank would be subject to these rules as any other tank owner.

How will the rule be implemented?

DEQ will implement the rules by providing written guidance to tank owners who need information on decommissioning a tank or cleaning up a release of heating oil. DEQ will notify currently licensed service providers and supervisors, and contractors registered with the Construction Contractors Board of rule changes and will provide training and written guidance materials.

Early implementation of certification of cleanup projects is proposed on a voluntary basis. Service providers currently licensed for soil matrix cleanups who obtain errors-and-omissions insurance will be given training and allowed to submit certified reports during December 1999 and January 2000. This will allow additional input from tank owners who might not comment on the proposed rules during the public comment period, but who will be able to comment on their particular project results and the new process for cleanup approval.

Are there time constraints?

Yes. The effective date for service provider and supervisor licensing changes is March 15, 2000. This allows approximately one month after the proposed adoption of the rules to implement changes to new licenses and fees. The effective date for supervisor license examinations is July 1, 2000, to coincide with new examinations for heating oil tank services now under development.

Contact for More Information

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact:

Laurie McCulloch
DEQ – UST Program
811 SW Sixth
Portland, OR 97204
503-229-5769
mcculloch.laurie.j@deq.or.us

Copies of the draft rules will be available December 1, 1999 by calling 503-229-5913 or 1-800-742-7878 to request that a hard copy be mailed to you, or directly on our web page at:

http://www.deq.state.or.us/wmc/tank/ust-lust.htm

This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

State of Oregon
Department of Environmental Quality Memorandum

Date: January 10, 2000

To: Environmental Quality Commission

From: Laurie McCulloch, UST Program

Subject: Presiding Officer's Report for Rulemaking Hearing
Heating Oil Tank Technical and Service Provider Licensing Rule Revisions
Attachment C

Two rule making hearings were held on the above titled proposal. At each hearing, people were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Hearing #1 Date and Time:	December 16, 1999, beginning at 2:00 pm
Hearing #1 Location:	777 Pearl Street, McNutt Conference Room, Eugene

The first rulemaking hearing on the above titled proposal was convened at 2:00 pm by Karen White-Fallon, Presiding Officer. Nine (9) people were in attendance; no one signed up to give oral testimony. One person handed in written comments. Prior to receiving testimony, Andree Pollock explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience. The hearing was closed at 3:04 pm.

Hearing #2 Date and Time:	December 21, 1999, beginning at 7:00 pm
Hearing #2 Location:	2020 SW Fourth, Conference Room 4, Portland

The second rulemaking hearing was convened at 7:00 pm by Mitch Scheel, Presiding Officer. Four (4) people were in attendance; three people signed up to give oral testimony (one left prior to providing testimony and one decided not to testify after his questions were answered). Prior to receiving testimony, Mike Kortenhof explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience. After the testimony was complete, the hearing was closed at 10:00 pm.

Memo To: Environmental Quality Commission
January 10, 2000
Presiding Officer's Report on
December 16 & 21, 1999 Rulemaking Hearings

Summary of Oral Testimony

Commentator #1, Arthur Van Alstine (O.E.M. Industries): Mr. Van Alstine stated that his company had eleven years of experience with underground storage tanks and feels that experience should have credibility. The (service provider) license fee is too high – this additional cost and cost of insurance will be passed on to home owners. Requiring licensed supervisors to collect samples when the tank is decommissioned will be a help to home owners and future property owners. Licensed supervisors who are experienced are more valuable than those who can just pass a test, but have not done the work. Sometimes rules are not clear enough, and it is important that (the revised rules) are clear.

Written Testimony

The following people provided written comments during the public comment period:

Commentator #2, Ron Richey (Staton Companies): Mr. Richey had four main points. 1) The current licensing programs for service providers and supervisors should be used (or some type of endorsement) until a licensee is retested for their current license (license expiration date); 2) Use liability insurance instead of errors-and-omissions insurance; 3) All printed paperwork should include the same disclaimer language contained in current DEQ "no further action" required letters. This disclaimer should be included in heating oil tank work to protect the contractor in the same way it protects DEQ; and 4) Recognize the distinction between construction related work and professional consulting services.

Commentator #3, Mark Norbury (Aspen Environmental): Mr. Norbury believes that the requirement for $1,000,000 coverage in errors-and-omissions insurance is too high and out of line with the work performed. Coverage of $25,000 per site would be adequate since third part impact (groundwater contamination or off-site migration of contamination) is usually covered under the home owner's insurance.

Commentator #4, Christopher Wohlers (Wohlers Environmental Services, Inc.): Mr. Wohlers had comments on three main issues of concern. 1) To insure legislative intent is achieved, DEQ should obtain formal feedback from home owners and service providers on whether the new process is timely, is cost reasonable, and understandable; 2) Service provider and supervisor license fee increases are extremely high and should be reduced, plus insurance costs are excessive for smaller businesses; and 3) objects to the requirement for registration with the Oregon Construction Contractors Board if the service provider is not doing excavation work.

Two others provided written testimony outside of the public comment period (one before and one after). Although their comments cannot be addressed officially, the Department believes their issues are addressed in the Staff Report and Response to Comments documents; their comments are summarized here as additional information.

John LaRiviere (Abiqua Engineering, Inc.): Mr. LaRiviere had three main issues. 1) License fees are too high and should be on a sliding scale based on number of tanks decommissioned per year; 2) Requirement for errors-and-omissions insurance is redundant if company is registered with the Construction Contractors Board. If a service provider sub-contracts with another company to do the excavating, that company should be registered with the CCB and that would be sufficient (insurance). The amount of insurance required is excessive and should be reduced to $250,000 to $500,000; and 3) It is reasonable to have the service provider responsible for rejected certifications, but there must be clear standards for rejection and the certifications must be reviewed by DEQ in a timely manner.

Mark Yinger (Mark Yinger Associates): Mr. Yinger objects to the proposed rules because he believes they cannot be implemented uniformly and equitably throughout Oregon. It will cause hardship for home owners in rural areas because there will not be any licensed service providers outside of the Willamette Valley. He is concerned that rural home owners will be required to hire a company from Portland (for increased costs), as small companies like his do not perform enough heating oil tank work to warrant the additional costs for licensing and insurance.

State of Oregon
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for
Heating Oil Tank Technical and Service Provider Licensing Rule Revisions

Attachment D
Department's Evaluation of Public Comments

Public comments are summarized below along with the Department's responses. Copies of the complete comments are available upon request. Please refer to the Presiding Officer's Report (Attachment C) for information about the public comment period and hearings.

General Comments

Comment: Commentator No. 4 recommends that the Department obtain feedback from home owners and service providers to determine if issues of legislative intent are in fact being met.

Response: The Department agrees that feedback is essential in gauging the effectiveness of program changes and has plans to do so as part of rule implementation. No changes to the rules are proposed.

OAR 340-177-0025(2)(c) and (d)

Comment: Commentator No. 1 believes that requiring licensed supervisors to collect soil samples (when a heating oil tank is decommissioned) will help home owners and future property owners.

Response: The Department agrees that minimum provisions for soil sampling at tank decommissioning are an essential environmental protection requirement. However, the rules do not preclude home owners from collecting the samples if they can insure that collection procedures are followed correctly to provide valid data. No rule changes are proposed.

OAR 340-163-0020(1) and (6)
and
OAR 340-163-0035(8)

Comments: Commentator #2 believes that the license changes should not go into effect until the current license expires for both service providers and supervisors.

Response: The licenses for heating oil tank services are a new license category, not a continuation of an existing license. Licensees have new responsibilities under the new program and the Department has new implementation and inspection tasks. The effective date of the license requirements has been set at March 15, 2000 in order to give companies and individuals approximately one month to apply for the new license type.

In addition, supervisors have until July 1, 2000 or a later date determined by the Department to take a new examination specific for heating oil tank work. In the interim, the Department will accept examinations for Soil Matrix Cleanup as qualifying for a Heating Oil Tank Supervisor license. The Department expects to use the discretion provided in the rules to allow supervisors a period of time (e.g. three to four months) after the exam is available to take the exam, get results back, and reapply for their license. No additional license fee will be charged for reissuance of the license after the new exam results are submitted. This is a one-time issue. No changes to the rules are proposed.

OAR 340-163-0020(3)(b)

Comment: Commentator #4 objects to the requirement for a service provider to be registered with the Oregon Construction Contractor's Board (CCB) if the company works as a consultant rather than performing actual tank excavation. Commentator #2 also believes there should be recognition of the distinction between construction related work and professional consulting services.

Response: The Department agrees that wording changes are necessary to clearly represent the intent of this requirement and has proposed revisions to this section. Revised rule language will clarify that the requirement for registration with CCB must be met if CCB requirements apply, instead of a specific requirement that all service providers must be registered.

OAR 340-163-0050

Comment: All four commentators believe that the amount of insurance required is too high and will cost too much for small businesses and Commentator #2 believes that liability insurance should be sufficient, instead of errors-and-omissions insurance. Commentator #3 believes that lower insurance amounts are sufficient as home owner general insurance would cover groundwater contamination or off-site migration of contamination issues.

Response: After further review and as a result of information obtained during the "early implementation" trial, the Department agrees that changes are appropriate and has proposed revisions to this section. The requirement for errors-and-omissions

insurance will be broadened to include "professional liability" insurance as the two types are generally synonymous and cover the same type of situations. However, general liability and pollution liability are specifically excluded as a qualifying types of insurance as they do not provide protection in the event a certificate is rejected by the Department due to errors made by the service provider. Insurance carried by a home owner is not pertinent to coverage required by a service provider.

Additionally, the amount of per occurrence insurance will be reduced from $1,000,000 to $500,000 to be consistent with Construction Contractor's Board liability insurance requirements per OAR 812-003-0000(16)(b) and 812-003-0015(3)(D). The aggregate amount has also been reduced from $2,000,000 to $1,000,000, as doubling of the "per occurrence" amount protects against a single catastrophic loss.

As a result of information obtained during the "early implementation" trial, a new requirement will also be added that the insurance "deductible" amount be stated on the copy of the insurance form provided to the Department. This is necessary to track as informational-only at this point with no set amount required, but will be valuable background data if problems with service provider certifications develop over time.

OAR 340-163-0060(2)(a)

Comment: Commentator No. 2 believes that certification language service providers are required to include with certified reports be the same as the language the Department previously used in "no further action" required letters.

Response: The Department agrees with this statement in general, but does not believe that the same language is necessary to specify what the service provider is actually certifying. The Department was *reviewing* work, while the service provider *performs* work. Both documents state that the environmental requirements have been met. In addition, individual service providers routinely state what their limitations are when they prepare a report for a home owner on the work that has been performed, and the proposed rules do not restrict that. No changes to the rules are proposed.

OAR 340-163-0150

Comment: Commentators No. 1 and No. 4 both believe that license fees for service providers and supervisors are much too high and should be reduced.

Response: The fee amounts are certainly much higher than service providers have been required to pay in the past. However, these license fees are set in statute (ORS 466.706 in accordance with House Bill 3107) and cannot be changed without legislative action. Work to approve license applications, inspect service provider performance and enforce compliance when there are violations must be funded by these license fees. Even with the increases, license fees and report registration fees are still not at a level to sustain a minimum program without additional funding from the Legislature for at least one more biennium. No changes to the rules are proposed.

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Attachment E
Detailed Changes to Original Rulemaking Proposal Made in Response to Public Comments

Listed below by rule number are recommended changes to the public comment rule drafts.

OAR 340-163-0020(3)(b)

Recommended: Hold and continuously maintain a valid certificate of registration with the Oregon Construction Contractors Board as required by its regulations.

Hearing Proposal: Hold and continuously maintain a valid certificate of registration with the Oregon Construction Contractors Board.

Reason: Additional wording adds clarity that registration must be maintained if it is required by the Construction Contractors Board.

OAR 340-163-0050(1)

Recommended: Any firm applying for a service provider license to perform heating oil tank services must first obtain insurance coverage for errors-and-omissions or professional liability that will be used to pay for any additional corrective action necessary as a result of improper or inadequate site assessment, decommissioning or cleanup work. General liability insurance or pollution liability insurance are not acceptable substitutes for the insurance requirements.

Hearing Proposal: Any firm applying for a service provider license to perform heating oil tank services must first obtain insurance coverage for errors-and-omissions (i.e. economic loss) that will be used to pay for any additional corrective action necessary as a result of improper or inadequate site assessment, decommissioning or cleanup work.

Reason: Wording changes add clarity and expand acceptable insurance coverage types. The changes specifically state that general or pollution liability insurance types are not acceptable, to avoid confusion.

OAR 340-163-0050(2)

Recommended: Insurance must be obtained in the amount of $500,000 per claim or per occurrence, with a total aggregate of $1,000,000, from an insurance company authorized to do business in Oregon. Coverage must remain continuous during the license period and until one (1) year after a firm has ceased to perform heating oil tank services in Oregon.

Hearing Proposal: Insurance must be obtained in the amount of $1,000,000 per claim or per occurrence, with a total aggregate of $2,000,000, from an insurance company authorized to do business in Oregon. Coverage must remain continuous during the license period and until one (1) year after a firm has ceased to perform heating oil tank services in Oregon.

Reason: Reduces amount of per-occurrence insurance required to be consistent with general liability insurance amount required by Construction Contractors Board for work on residential and commercial sites. The aggregate amount is also reduced to be consistent with standard industry practices of doubling per-occurrence amount to provide protection against a single catastrophic loss.

OAR 340-163-0050(3)(a)

Recommended: The name of the insurance company, policy number, effective dates of coverage, coverage amounts, deductible amount, name of all insured entities, agent's name, address and telephone number;

Hearing Proposal: The name of the insurance company, policy number, effective dates of coverage, coverage amounts, name of all insured entities, agent's name, address and telephone number;

Reason: The additional information on deductible amounts is informational-only at this point and no limitations are being made. Insurance forms reviewed by the Department to date show some deductibles as high as $25,000. This amount is higher than many claims could be. Having the information on hand will help determine possible solutions to a potential future problem, should the Department see a high number of rejected certifications. A rejected certification coupled with a high insurance deductible amount could result in a bankruptcy situation, which could be disastrous for a home owner or small business.

OAR 340-163-0110(2)

Recommended:

(2) The Department may also deny issuance of, suspend or revoke a license if the service provider or supervisor fails to comply with any applicable local, state or federal regulations pertaining to the performance of heating oil tank services or demonstrates negligence or incompetence, including but not limited to situations where the service provider or supervisor:
(a) Fails to employ and designate a licensed supervisor for each project;
(b) Fails to maintain required insurance;
(c) Fails to maintain appropriate registration with the Oregon Construction Contractors Board;
(d) Fails to resolve heating oil tank compliance related violations in accordance with an enforcement schedule or order issued by the Department;
(e) Fails to make corrections specified by the Department as the result of the Department's rejection of a decommissioning or cleanup report certified by the service provider;
(f) Fails to correct deficiencies noted by the Department for an incomplete license application;
(g) Fails to maintain a current address with the Department; or

Hearing Proposal:

(2) The Department may also deny issuance of, suspend or revoke a license if the service provider or supervisor fails to comply with any applicable local, state or federal regulations pertaining to the performance of heating oil tank services or demonstrates negligence or incompetence in performance of the services by:
(a) Failing to employ and designate a licensed supervisor for each project;
(b) Failing to maintain required insurance;
(c) Failing to maintain appropriate registration with the Oregon Construction Contractors Board;
(d) Failing to resolve heating oil tank compliance related violations in accordance with an enforcement schedule or order issued by the Department;
(e) Failing to make corrections specified by the Department as the result of the Department's rejection of a decommissioning or cleanup report certified by the service provider;
(f) Failing to correct deficiencies noted by the Department for an incomplete license application;
(g) Failing to maintain a current address with the Department; or

Reason:

These changes were made at the recommendation of Department Counsel to ensure that rule language in this section is clear and does not inadvertently restrict Department action on enforcement issues.

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Attachment F
List of Heating Oil Tank Work Group Members

The following is the list of Work Group members involved with the rule revision process. Mike Kortenhof of DEQ chaired the group. Audience participation was encouraged whenever feasible.

Last Name	**First Name**	**Organization Name**	**City**
Adams	Brian	Sunset Fuel/Safe-Way Tank	Portland
Arntson	Jeff	Albina Fuel Company	Portland
Baracco	Al	Northwest Natural Gas	Portland
Bush	Charles	Portland Tank Service, Inc.	Portland
Chenoweth	Brian	Rycewicz & Chenoweth	Portland
DeSpain	Robert	Staton Companies	Eugene
Elliott	Kent	Elliott, Powell, Baden & Baker	Portland
Friant	Doug	Portland Fire Bureau	Portland
Goodman	Ron	Goodman Brothers Inc.	Portland
Hudson	Kris	Home Owner	Portland
Pratuch	Jeff	Washington Mutual	Clackamas
Rock	David	Portland Bureau of Buildings	Portland
Schmidt	Jerry	Oregon Association of Realtors	Salem

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Attachment G
Rule Implementation Plan

Summary of the Proposed Rule

The 1999 Legislative Assembly passed House Bill 3107 which specifies requirements for licensing of companies and individuals who provide heating oil tank services. Licensed service providers must certify that the work they perform meets all regulations and must have insurance to cover errors and omissions. Decommissioning standards must be established for tank owners who voluntarily choose to decommission a tank. DEQ will file certified reports for a $50 fee. DEQ will audit (i.e. review reports and conduct inspections) the work of licensed service providers and supervisors. License fees are set at $750 per year for service providers and $75 per year for supervisors. The Department has the statutory authority to address these issues under ORS 466.706.

Proposed Effective Date of the Rule

The rule revisions will be heard at the February 11, 2000 Environmental Quality Commission meeting. The proposed effective date of the service provider licensing requirements is March 15, 2000; this will allow approximately one month for companies to apply for and receive new licenses. The proposed effective date for licensing changes for supervisors is July 1, 2000; this will coincide with the anticipated availability date for new examinations currently under development.

Notification of Affected Persons

All existing licensed service providers and supervisors have been notified of the proposed rule changes, including contractors listed with the Oregon Construction Contractors Board. Notification was also sent to approximately 4,000 persons, primarily homeowners and realtors who have expressed interest in heating oil tank rules over the past several years. Detailed program information has been posted on the Underground Storage Tank (UST) program web page. A press release was made and sent to all forms of media (print, radio, television) throughout the state to help inform the public that rule changes are being proposed. Information was also be provided to DEQ's list of persons who are interested in all DEQ rule actions.

Proposed Implementing Actions

The Legislature approved 4.0 FTE for the program. Internal implementation will be through staff training meetings, with a statewide-consistent internal process to be established that includes a review process for reports certified by service providers. The DEQ Business Office has been informed and consulted regarding the procedural change from cost recovery (invoices mailed to tank owners with checks received on payment date) to filing fees (checks received from tank owners). External implementation will be done primarily through fact sheets, checklists, service provider training meeting(s), and written process instructions. Use of the UST web page is important for information dissemination.

Education and outreach efforts will be key to implementation of the proposed rules. The goal is to inform homeowners of issues and options. Coordination with the media and home-related businesses (realtors, furnace contractors, lenders) through fact sheets and guidance documents will be used to communicate new program information. A HOT (Heating Oil Tank) Helpline telephone message system will be established to provide answers to frequently asked questions.

Early implementation of service provider certified cleanups is being tried during December 1999 and January 2000. Service providers who are currently licensed for soil matrix cleanup work and who have the required insurance are eligible to participate in the trial period. Tank owners with cleanups pending have been notified of the opportunity to participate in this trial. The change from an average $250 cost recovery bill to a $50 filing fee is likely to be a good incentive to participate. This will also be an opportunity for DEQ to receive direct feedback from tank owners and service providers on the proposed rule changes. Decommissioning certifications will begin after rules have been adopted.

Proposed Training/Assistance Actions

Staff will be provided initial information through statewide program meetings. Smaller training sessions will be offered for staff expected to be working closely with the new program. Service providers will be provided a one-day training session on the new requirements for certifying work.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item H
February 11, 2000 Meeting

Title:

Marine Loading Vapor Control

Summary:

The purpose of this rulemaking is to adopt new rules and rule amendments Air Quality OARs 340, Divisions 232 and 200. This rulemaking requires all bulk gasoline terminals operating in the Portland area will reduce emissions of gasoline vapors when loading marine vessels by at least 95 percent. This also requires pollution control for lightering (lightering is the term used to describe the ship to ship transfer of cargo) when either vessel is birthed at a terminal dock. Uncontrolled lightering that occurs at designated anchorage's in the river would be prohibited on Clean Air Action days. The proposal does not affect refueling of vessels.

The Portland area is officially classified as in attainment with the ozone standard, having completed a ten year maintenance plan detailing commitments to continuing healthful air quality. Securing emission reductions from marine loading of gasoline or equivalent sources was identified as a commitment within the plan. This rule will be submitted, if adopted to the US EPA as a revision to the Oregon Clean Air Act State Implementation Plan (OAR 340-200-0040), as required by the Clean Air Act.

Department Recommendation:

The department recommends that the Commission adopt the rules/rule amendments regarding Marine Loading Vapor Control as presented in Attachment A of the staff report.

Report Author | Division Administrator | Director

1/11/00

Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503) 229-5317(voice)/(503) 229-6993(TDD).

State of Oregon
Department of Environmental Quality Memorandum

Date: January 24, 2000

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item H, Marine Loading Vapor Control, EQC Meeting February 11, 2000

Background

On November 9, 1999, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would require vapor recovery controls when loading gasoline and, under certain conditions, other fuel products onto river barges in the Portland area.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on December 1, 1999. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the department to be potentially affected by or interested in the proposed rulemaking action on November 10, 1999.

A Public Hearing was held December 16, 1999 with George Davis serving as Presiding Officer. Written comment was received through December 21, 1999. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the department. These modifications are summarized below and detailed in Attachment E.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

In 1997 EPA redesignated the Portland area as in attainment with the ozone health standards and approved the ten-year maintenance plan that outlines strategies to assure continuing healthful air quality. Achieving emission reductions from marine loading of gasoline or other equivalent reductions by 1999 was identified as a commitment within the plan. When gasoline is loaded onto river barges for transport the vapors are allowed to vent to the outdoor atmosphere. The vapors released from this activity, over 600 tons per year, contribute to ozone air pollution. The department had relied upon restricting barge loading activity on Clean Air Action Days but found that, despite the good cooperation of the terminals with this program, pollutants from this activity still contributed to exceedances of the ozone standard. The plan relied on reductions from a cross-Cascades pipeline that would have provided a cost effective alternative to barging gasoline to fuel terminals east of the mountains. In July, 1999, planning for the pipeline was halted following an explosion from a pipeline rupture in Bellingham, reinforcing the need to implement a more effective long term solution. Therefore, the department is proposing to make up the emission reductions through an alternative means as required by the maintenance plan.

Relationship to Federal and Adjacent State Rules

A federal guideline requires the same emission reduction performance standard as proposed in this rule. However, the federal rule applies only to terminals loading more than 10 million barrels per year. None of the Portland terminals meet the federal applicability limits.

Several jurisdictions in California, including the South Coast Air Quality Management District, the San Luis Obispo Air Pollution Control District and the Bay Area Air Quality Management District, have adopted marine vapor recovery rules similar to the rule proposed here, including emission reduction performance and applicability. Neither the Washington state Department of Ecology nor any local air pollution control district in that state have yet adopted requirements for marine vapor recovery. However the Southwest Washington Air Pollution Control Authority has committed to proposing requirements similar to Oregon's for the two bulk gas marine terminals located in Vancouver.

Authority to Address the Issue

The Department of Environmental Quality is directed by the policy outlined in ORS 468A.010 "to restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state." The department, under direction from the Environmental Quality Commission is to prepare and develop comprehensive plans for the control of air pollution, recognizing the varying requirements for different areas of the state (ORS 468A.035). Section 183 (f) of the 1990 federal Clean Air Act Amendments authorizes states to adopt standards that regulate emissions from marine vessels.

Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)

The department reviewed marine vapor control requirements in other jurisdictions around the country and developed a straw proposal based on the need to reduce emissions as part of the Portland ozone maintenance plan and the relative cost effectiveness of these controls. The straw proposal called for controls year-round for the larger terminals and only during the ozone season at the smaller terminals (those loading less than 10,000,000 gallons of gasoline per year). The seasonal requirement was proposed assuming that it would lead to development of contractual arrangements with the larger controlled terminals to control vapors rather than the construction and then off-season idling of control equipment. Contractual arrangements similar to this have been used to meet pollution control requirements at truck loading facilities. The proposal also called for vapor control during all lightering events. Lightering is the term used to describe the ship-to-ship transfer of cargo.

This straw proposal was presented in a series of meetings to representatives of the bulk terminals, shipping companies and interested and affected persons in order to identify concerns. Industry concerns centered on the definition of applicable fuel products, the effective date of the rule and the practicality of complying with a seasonal requirement. The public was concerned with cumulative effects of exposure to the pollutants found in gasoline vapor and wanted to secure the maximum protection from exposure to the vapors associated with gasoline loading as soon as possible. Concerned citizens urged the department to more thoroughly investigate the feasibility of portable controls to make complete control of these emissions more economically viable. This information shaped the proposal presented for public hearing.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

The proposal presented on public notice requires that all bulk gasoline terminals operating in the Portland area reduce the emissions of gasoline vapors when loading marine vessels by at least 95 percent. The proposal also required pollution control for lightering when either vessel is berthed at a terminal dock. Uncontrolled lightering that occurs at designated anchorages in the river would be prohibited on Clean Air Action days.

Successful control of the emissions from barge loading of gasoline anywhere in the country has required the resolution of concerns regarding safety, regulatory authority and cost effectiveness. The promulgation of rules by the U.S. Coast Guard in 1990 regarding vessel safety during loading events and the adoption of the 1990 amendments to the federal Clean Air Act marked the resolution of the first two concerns. As elsewhere, the cost of controls for small terminals in Portland is disproportionately greater than for facilities with larger throughputs. Marine vapor control systems are sized and priced according to the maximum anticipated loading rate. Since all terminals want to

proposal the department had originally proposed seasonal controls for the small terminals. However, after discovering that portable control devices made full time compliance economically feasible for the smaller terminals, the proposal placed on public notice was revised to require the same emission reductions from all terminals year round.

Summary of Significant Public Comment and Changes Proposed in Response

- **Comment: Require a more stringent pollution reduction standard, e.g., 99%.**
  Response: The department disagreed that a more stringent standard is necessary but is recommending adding a concentration limitation to improve compliance. The most stringent standard in the state and federal rules is 95% reduction. Achieving greater reductions becomes increasingly more difficult and more expensive. Certain jurisdictions require concentration limits but this limitation effectively applies only during the startup phase of barge loading when emissions are low. The department recognizes that these concentration limits allow for more reliable compliance determinations and is recommending adding a limit similar to California's to the rule. This will bring Oregon's rule in line with the emission standard adopted in all other West Coast jurisdictions where barge loading is regulated. The proposed rule will result in equipment being installed, as in other jurisdictions, with efficiencies higher than 95% to ensure that full compliance can be continuously maintained.
- **Comment: Require vapor control when loading any petroleum product.**
  Response: The department disagrees with this comment. The Portland petroleum market is "simple" compared to other jurisdictions with marine vapor control rules. In part this is because the Portland area, unlike the other jurisdictions where marine vapor control is required, does not have any refineries. The range of products transported here is limited. Gasoline is the most volatile product loaded onto barges in the area and also represents the greatest volume of petroleum products shipped. Based on 1997 shipping reports to the Corps of Engineers, gasoline accounted for about 99% of all VOC emissions from barge transported petroleum products in the Portland area. Recovery and destruction efficiencies for petroleum products other than gasoline are also much lower, making vapor control of these products much more energy intensive and inefficient.
- **Comment: Require vapor control statewide.**
  Response: The department disagrees with this comment. The rule is driven by a need to secure emission reductions to assure continued compliance with the ozone standard in Portland. There are no other barge loading terminals in areas that experience ozone problems. It is unlikely that terminals can move to other locations in the state that are on navigable waterways with convenient and inexpensive access to large supplies of gasoline to justify extending the geographic applicability of the rule.
- **Comment: Require vapor control for all ship-to-ship loading events.**
  Response: The department disagrees with this comment but is recommending a change to monitor the level of uncontrolled activity. The vapor control equipment at the terminal will control emissions from ship-to-ship transfers, or lightering, when these transfers occur at a terminal dock. Because of technical limitations ship-based vapor control is difficult to achieve and expensive to

- **Comment: Require vapor control for all ship-to-ship loading events.**
  Response: The department disagrees with this comment but is recommending a change to monitor the level of uncontrolled activity. The vapor control equipment at the terminal will control emissions from ship-to-ship transfers, or lightering, when these transfers occur at a terminal dock. Because of technical limitations ship-based vapor control is difficult to achieve and expensive to install, so it is not practicable to require controls for midstream lightering. The department is recommending a change in the recordkeeping requirements of the proposal to allow more accurate tracking of the impact from this uncontrolled activity. Marine vessel owners and operators will be required to maintain records of all lightering events, regardless of the location, and report this data to the department. The department will periodically evaluate the data to determine impact and will also assess the development of feasible controls. In the event of an assessment of a significant impact and/or the advent of feasible controls, the department will propose controls on midstream lightering in the future.
- **Comment: Establish an exemption based on throughput or emissions.**
  Response: The department disagrees with this comment. Compliance costs are greater for smaller terminals than larger terminals but the department does not believe they are unreasonable. EPA established a reasonable standard for marine vapor control in 1979 at costs of $2000 per ton of pollution reduced. Accounting for inflation, the value would be about $4600 today. Analysis of the impacts associated with the terminal in question indicate that control costs would be about $1900 per ton. These costs also compare favorably to the costs of other emission reduction strategies in the maintenance plan.
- **Comment: Compliance deadline is too short or too long.**
  Response: The department believes the compliance schedule is achievable and neither too long nor too short. The compliance schedule was established to achieve the earliest possible protection for the ozone season while allowing sufficient time to install a complex system that must perform reliably to meet strict safety and environmental requirements. This schedule can not be readily shortened as time is needed to engineer and build each of these control units as well as to secure authorization from the city of Portland for building and greenway construction and approval from the Division of State Lands, the Corps of Engineers and other agencies with responsibilities for oversight of activities that affect waterways and threatened species. The department will work to facilitate permit review by these agencies because of the importance of obtaining these emission reductions. The proposed schedule is, on the other hand, not too long. Many other jurisdictions have allowed up to three years for compliance. Only one other jurisdiction has proposed a tighter schedule, by three months, for compliance with marine vapor control requirements.
- **Comment: Delete one-time visit exemption.**
  Response: The department agrees with this comment and recommends changes to the rule. The proposal exempted vessels for any single visit to the Portland harbor within a year from compliance with the rule. After review the department determined that compliance monitoring would be difficult to implement. Allowing an exemption of this sort also proved to be outside accepted practice in the maritime industry as all vessels are required to meet U.S. Coast Guard safety requirements when visiting U.S. ports regardless of where they travel in their normal course of trade.

- **Comment: Require vessel owner/operators to be equally responsible with terminal operators for compliance with the rule.**
  Response: The department agrees with this comment and recommends changes to the rule. It is typical practice in many other jurisdictions to make all parties responsible for compliance and will serve as an incentive for all parties to meet the requirements of the rule.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

By June 1, 2001 all bulk gas terminals in the Portland area will be required to use pollution control equipment when loading gasoline onto river barges. If the previous load in the barge was gasoline then vapor control will be required when loading any subsequent petroleum product. Ship-to-ship transfers, known as lightering, will be required to be conducted with vapor control if either vessel is berthed at a terminal dock. Mid-river lightering transfers will not require vapor control but will be prohibited on Clean Air Action days.

Department staff will incorporate the requirements of this proposed rule into the existing permits of the bulk gas terminals operating in the Portland area. Inspection and compliance assistance activities related to marine operations will be incorporated into the existing compliance assurance inspections associated with other permitted activity at the bulk gas terminals.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding Marine Loading Vapor Control as presented in Attachment A of the department Staff Report.

Attachments

A. Rule (Amendments) Proposed for Adoption
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
F. Rule Implementation Plan

Reference Documents (available upon request)

Written Comments Received (listed in Attachment C)
(Other Documents supporting rule development process or proposal)

Controlling Hydrocarbon Emissions from Tank Vessel Loading, National Research Council, 1987

Draft Environmental Impact Statement, Cross Cascade Pipeline, U.S. Forest Service & Washington State Energy Facility Site Evaluation Council, September 1998

Hazardous Air Pollutant Emissions from Gasoline Loading Operations at Bulk Gasoline Terminals, American Petroleum Institute, October 1998

OAQPS Control Cost Manual, Fifth Edition, U.S. Environmental Protection Agency, February 1996

Approved:

Section:

Division:

Report Prepared By: Kevin Downing

Phone: 503 229-6549

Date Prepared: January 21, 2000

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12/27/1999

DIVISION 232

EMISSION STANDARDS FOR VOC POINT SOURCES

340-232-0030
Definitions

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Aerospace component" means the fabricated part, assembly of parts, or completed unit of any aircraft, helicopter, missile or space vehicle.

(2) "Air dried coating" means coatings which are dried by the use of air at ambient temperature.

(3) "Applicator" means a device used in a coating line to apply coating.

(4) "Bulk gasoline plant" means a gasoline storage and distribution facility which receives gasoline from bulk terminals by railroad car or trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and gasoline dispensing facilities.

(5) "Bulk gasoline terminal" means a gasoline storage facility which receives gasoline from refineries primarily by pipeline, ship, or barge, and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck.

(6) "Can coating" means any coating applied by spray, roller, or other means to the inside and/or outside surfaces of metal cans, drums, pails, or lids.

(7) "Carbon bed breakthrough" means the initial indication of depleted adsorption capacity characterized by a sudden measurable increase in VOC concentration exiting a carbon adsorption bed or column.

(8) "Certified storage device" means vapor recovery equipment for gasoline storage tanks as certified by the State of California Air Resources Board Executive Orders, copies of which are on file with the Department, or which has been certified by other air pollution control agencies and approved by the Department.

(9) "Class II hardboard paneling finish" means finishers which meet the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.

(10) "Clear coat" means a coating which lacks color and opacity or is transparent and uses the undercoat as a reflectant base or undertone color.

(11) "Coating" means a material applied to a surface which forms a continuous film and is used for protective and/or decorative purposes.

(12) "Coating line" means one or more apparatus or operations which include a coating applicator, flash-off area, and oven or drying station wherein a surface coating is applied, dried, and/or cured.

(13) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at standard conditions.

(14) "Crude oil" means a naturally occurring mixture which consists of hydrocarbons and/or sulfur, nitrogen, and/or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

(15) "Custody transfer" means the transfer of produced petroleum and/or condensate after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(16) "Cutback asphalt" means a mixture of a base asphalt with a solvent such as gasoline, naphtha, or kerosene. Cutback asphalts are rapid, medium, or slow curing (known as RC, MC, SC), as defined in **ASTM D2399**.

(17) "Day" means a 24-hour period beginning at midnight.

(18) "Delivery vessel" means any tank truck or trailer used for the transport of gasoline from sources of supply to stationary storage tanks.

(19) "Dry cleaning facility" means any facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

(20) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation.

(21) "External floating roof" means a cover over an open top storage tank consisting of a double deck or pontoon single deck which rests upon and is supported by the volatile organic liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(22) "Extreme performance coatings" means coatings designed for extreme environmental conditions such as exposure to any one of the following: continuous ambient weather conditions, temperature consistently above 95° C., detergents, abrasive and scouring agents, solvents, corrosive atmosphere, or similar environmental conditions.

(23) "Extreme performance interior topcoat" means a topcoat used in interior spaces of aircraft areas requiring a fluid, stain or nicotine barrier.

(24) "Fabric coating" means any coating applied on textile fabric. Fabric coating includes the application of coatings by impregnation.

(25) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(26) "Freeboard ratio" means the freeboard height divided by the width (not length) of the degreaser's air/solvent area.

(27) "Forced air dried coating" means a coating which is dried by the use of warm air at temperatures up to 90° C. (194° F.).

(28) "Gas Freed" means a marine vessel's cargo tank has been certified by a Marine Chemist as "Safe for Workers" according to the requirements outlined in the National Fire Protection Association Rule 306.

(2~~8~~9) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 27.6 kPa (4.0 psi) or greater which is used to fuel internal combustion engines.

(~~29~~30) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle, boat, or airplane gasoline tanks from stationary storage tanks.

(3~~0~~1) "Gas service" means equipment which processes, transfers or contains a volatile organic compound or mixture of volatile organic compounds in the gaseous phase.

(3~~1~~2) "Hardboard" is a panel manufactured primarily from inter-felted ligno-cellulosic fibers which are consolidated under heat and pressure in a hot press.

(3~~2~~3) "Hardwood plywood" is plywood whose surface layer is a veneer of hardwood.

(3~~3~~4) "High performance architectural coating" means coatings applied to aluminum panels and moldings being coated away from the place of installation.

(34~~5~~) "Internal floating roof" means a cover or roof in a fixed roof tank which rests upon or is floating upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(3~~5~~6) "Large appliance" means any residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

(3~~6~~7) "Leaking component" means any petroleum refinery source which has a volatile organic compound concentration exceeding 10,000 parts per million (ppm) when tested in the manner described in method 31 and 33 on file with the Department. These sources include, but are not limited to, pumping seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices, process drains, and open-ended pipes. Excluded from these sources are valves which are not externally regulated.

(3~~7~~8) "Lightering" means the transfer of fuel product into a cargo tank from one marine tank vessel to another.

(3~~7~~9) "Liquid-mounted" means a primary seal mounted so the bottom of the seal covers the liquid surface between the tank shell and the floating roof.

(~~38~~40) "Liquid service" means equipment which processes, transfers or contains a volatile organic compound or mixture of volatile organic compounds in the liquid phase.

(4~~0~~1) "Loading event" means the loading or lightering of gasoline into a marine tank vessel's cargo tank, or the loading of any product into a marine tank vessel's cargo tank where the prior cargo was gasoline. The event begins with the connection of a marine tank vessel to a storage or cargo tank by means of piping or hoses for the transfer of a fuel product from the storage or cargo tank(s) into the receiving marine tank vessel. The event ends with disconnection of the pipes and/or hoses upon completion of the loading process.

(~~39~~42) "Low solvent coating" means a coating which contains a lower amount of volatile organic compound than conventional organic solvent borne coatings. Low solvent coatings include waterborne, higher solids, electrodeposition and powder coatings.

(4~~0~~3) "Major modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase for any pollutant subject to regulation under the Clean Air Act.

(4~~1~~4) "Major source" means a stationary source which emits or has the potential to emit any pollutant regulated under the Clean Air Act at a significant emission rate.

(45) "Marine Tank Vessel" means any marine vessel constructed or converted to carry liquid bulk cargo that transports gasoline.

(46) "Marine Terminal" means any facility or structure used to load or unload any fuel product cargo into or from marine tank vessels.

(47) "Marine Vessel" means any tugboat, tanker, freighter, passenger ship, barge or other boat, ship or watercraft.

(4~~2~~8) "Maskant for chemical processing" means a coating applied directly to an aerospace component to protect surface areas when chemical milling, anodizing, aging, bonding, plating, etching and/or performing other chemical operations on the surface of the component.

(4~~3~~9) "Miscellaneous metal parts and products" means any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, magnet wires, automobiles, ships, and airplane bodies.

(~~44~~50) "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(~~45~~51) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.

(~~46~~52) "Oven-dried" means a coating or ink which is dried, baked, cured, or polymerized at temperatures over 90° C. (194° F.).

(~~47~~53) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(~~48~~54) "Paper coating" means any coating applied on paper, plastic film, or metallic foil to make certain products, including (but not limited to)adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, or pressure sensitive tapes. Paper coating includes the application of coatings by impregnation and/or saturation.

(~~49~~55) "Person" means the federal government, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(5~~0~~6) "Petroleum refinery" means any facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum, crude oil, or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Petroleum refinery" does not mean a re-refinery of used motor oils or other waste chemicals. "Petroleum refinery" does not include asphalt blowing or separation of products shipped together.

(5~~1~~7) "Plant site basis" means all of the sources on the premises (contiguous land) covered in one Air Contaminant Discharge Permit unless another definition is specified in a Permit.

(5~~2~~8) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitations on the capacity of a source to emit an air pollutant, excluding air pollution control equipment, shall be treated as part of its design if the limitation is enforceable by the Department.

(5~~3~~9) "Pretreatment wash primer" means a coating which contains a minimum of 0.5% acid by weight for surface etching and is applied directly to bare metal surfaces to provide corrosion resistance and adhesion.

(~~54~~60) "Printed interior panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(~~55~~61) "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage.

(~~56~~62) "Prime coat" means the first of two or more films of coating applied in an operation.

(~~57~~63) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

(~~58~~64) "Reasonably available control technology" or "RACT" means the lowest emission limitation that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

(~~59~~65) "Roll printing" means the application of words, designs and pictures to a substrate by means of hard rubber or steel rolls.

(6~~0~~6) "Sealant" means a coating applied for the purpose of filing voids and providing a barrier against penetration of water, fuel or other fluids or vapors.

(6~~1~~7) "Specialty printing" means all gravure and flexographic operations which print a design or image, excluding publication gravure and packaging printing. Specialty Printing includes printing on paper plates and cups, patterned gift wrap, wallpaper, and floor coverings.

(6~~2~~8) "Splash filling" means the filling of a delivery vessel or stationary storage tanks through a pipe or hose whose discharge opening is above the surface level of the liquid in the tank being filled.

(6~~3~~9) "Source" means any building, structure facility, installation or combination thereof which emits or is capable of emitting air contaminants to the atmosphere and is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control.

(~~64~~70) "Source category" means all sources of the same type or classification.

(~~65~~71) "Submerged fill" means any fill pipe or hose, the discharge opening of which is entirely submerged when the liquid is 6 inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe, the discharge of which is entirely submerged when the liquid level is 18 inches, or is twice the diameter of the fill pipe, whichever is greater, above the bottom of the tank.

(~~66~~72) "Thin particleboard" means a manufactured board 1/4 inch or less in thickness made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure.

(~~67~~73) "Thirty-day rolling average" means any value arithmetically averaged over any consecutive thirty days.

(~~68~~74) "Tileboard" means paneling that has a colored waterproof surface coating.

(~~69~~75) "Topcoat" means a coating applied over a primer or intermediate coating for purposes such as appearance, identification or protection.

(7~~0~~6) "True vapor pressure" means the equilibrium pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks", February, 1980.

(7~~1~~7) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(7~~2~~8) "Vapor-mounted" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the primary seal, the tank shell, the liquid surface, and the floating roof.

(79) "Vapor Tight" means, as used in OAR 340-232-0110, a condition that exists when the concentration of a volatile organic compound, measured one centimeter from any source, does not exceed 10,000 ppm (expressed as methane) above background.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0020.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 6-1996, f. & cert. ef. 3-29-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 20-1998, f. & cert. ef. 10-12-98; renumbered from OAR 340-022-0102.

340-232-0110

Loading Gasoline onto Marine Tank Vessels

(1) Applicability. This rule applies to loading events at any location within the Portland ozone air quality maintenance area when gasoline is placed into a marine tank vessel cargo tank; or where any liquid is placed into a marine tank vessel cargo tank that had previously held gasoline. The owner or operator of each marine terminal and marine tank vessel is responsible for and must comply with this rule.

(2) Exemptions. The following activities are exempt from the marine vapor control emission limits of this rule:

(a) Marine vessel bunkering;

(b) Lightering when neither vessel is berthed at a marine terminal dock,

(c) Loading when both of the following conditions are met:

(A) The vessel has been gas freed (regardless of the prior cargo), and

(B) When loading any products other than gasoline.

(3) Vapor Collection System. The owner or operator of a marine terminal subject to this rule must equip each loading berth with a vapor collection system that is designed to collect all displaced VOC vapors during the loading of marine tank vessels. The owner or operator of a marine tank vessel subject to this rule must equip each marine tank vessel with a vapor collection system that is designed to collect all displaced VOC vapors during the loading of marine tank vessels. The collection system must be designed such that all displaced VOC vapors collected during any loading event are vented only to the control device.

(4) Marine Vapor Control Emission Limits. Vapors that are displaced and collected during marine tank vessel loading events must be reduced from the uncontrolled condition by at least 95 percent by weight, as determined by EPA Method 25 or other methods approved in writing by the Department or limited to 5.7 grams per cubic meter (2 lbs. per 1000 bbls) of liquid loaded.

(5) Operating Practice and Maintenance.

(a) All hatches, pressure relief valves, connections, gauging ports and vents associated with the loading of fuel product into marine tank vessels must be maintained to be leak free and vapor tight.

(b) The owner or operator of any marine tank vessel must certify to the Department that the vessel is leak free, vapor tight, and in good working order based on an annual inspection using EPA Method 21 or other methods approved in writing by the Department.

(c) Gaseous leaks must be detected using EPA Method 21 or other methods approved in writing by the Department.

(d) Loading must cease anytime gas or liquid leaks are detected. Loading may continue only after leaks are repaired or if documentation is provided to the Department that the repair of leaking components is technically infeasible without dry-docking the vessel or cannot otherwise be undertaken safely. Subsequent loading events involving the leaking components are prohibited until the leak is repaired. Any liquid or gaseous leak detected by Department staff is a violation of this rule.

(6) Monitoring and Record-Keeping.

(a) Marine terminal operators must maintain operating records for at least five years of each loading event at their terminal. Marine tank vessel owners and operators are responsible for maintaining operating records for at least five years for all loading events involving each of their vessels. Records must be made available to DEQ upon request. These records must include but are not limited to:

(A) The location of each loading event.

(B) The date of arrival and departure of the vessel.

(C) The name, registry and legal owner of each marine tank vessel participating in the loading event.

(D) The type and amount of fuel product loaded into the marine tank vessel.

(E) The prior cargo carried by the marine tank vessel. If the marine tank vessel has been gas freed, then the prior cargo can be recorded as gas freed.

(F) The description of any gaseous or liquid leak, date and time of leak detection, leak repair action taken and screening level after completion of the leak repair.

(7) Lightering exempted from controls by subsection 2 (b) of this rule must be curtailed from 2:00 AM until 2:00 PM when the Department declares a Clean Air Action (CAA) day. If the Department declares a second CAA day before 2:00 PM of the first curtailment period, then such uncontrolled lightering must be curtailed for an additional 24 hours until 2:00 PM on the second day. If a third CAA day in a row is declared, then uncontrolled lightering is permissible for a 12 hour period starting at 2 PM on the second CAA day and ending at 2 AM on the third CAA day. Uncontrolled lightering must be curtailed from 2 AM until 2 PM on the third CAA day. If the Department continues to declare CAA days consecutively after the third day, the curtailment and loading pattern used for the third CAA day will apply.

(8) Safety/Emergency Operations. Nothing in this rule is intended to:

(a) Require any act or omission that would be in violation of any regulation or other requirement of the United States Coast Guard; or

(b) Prevent any act that is necessary to secure the safety of a vessel or the safety of passengers or crew.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468A.035

Stats. Implemented: ORS 468A.025

DIVISION 200
GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

General

340-200-0040
State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal **Clean Air Act**, Public Law 88-206 as last amended by Public Law 101-549.

(2) Except as provided in section (3) of this rule, revisions to the SIP shall be made pursuant to the Commission's rulemaking procedures in Division 11 of this Chapter and any other requirements contained in the SIP and shall be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department is authorized:

(a) To submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of **40 CFR 51.102 (July 1, 1992)**; and

(b) To approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

[**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020

Stat. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. &cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-28-99; DEQ 2-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; renumbered from OAR 340-020-0047.

Attachment B-1

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

DEQ – Air Quality Agency and Division	Chapter 340 Administrative Rules Chapter Number
Susan M. Greco Rules Coordinator	(503) 229-5213 Telephone
811 S.W. 6th Avenue, Portland, OR 97213 Address	

December 16, 1999	7:00 PM	State Office Building Room 140, 800 NE Oregon Portland, Oregon	DEQ Staff
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?
☒ Yes ☐ No

RULEMAKING ACTION

ADOPT:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

340-232-0110

AMEND:

340-232-0030, 340-200-0040

Stat. Auth.: ORS 468A.035
Stats. Implemented: ORS 468A.025

RULE SUMMARY

Often when gasoline is loaded onto barges for transport the vapors are allowed to escape to the atmosphere, leading to adverse air pollution impacts. This rule proposal would require vapor recovery controls when loading gasoline and, under certain other conditions, other fuel products onto barges in the Portland area. The proposal does not affect refueling of vessels. The Portland area is officially classified as in attainment with the ozone standard, having completed a ten year maintenance plan detailing commitments to continuing healthful air quality. Securing emission reductions from marine loading of gasoline or equivalent sources was identified as a commitment within the plan. This rule will be submitted, if adopted, to the U.S. EPA as a revision to the Oregon Clean Air Act State Implementation Plan (340-200-0040), as required by the Clean Air Act.

Copies of the proposal are available for review at DEQ Headquarters, 11th floor, 811 SW 6th Avenue, Portland or by calling Kevin Downing at 503/229-6549.

December 21, 1999 5:00 PM Last Day for Public Comment	Authorized Signer and Date

Attachment B-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Marine Loading Vapor Control

Fiscal and Economic Impact Statement

Introduction

Terminals will likely use one of two technologies, carbon adsorption or combustion, to control the emission of gasoline vapors when loading barges. Carbon adsorption returns the vapor to a liquid state for reuse while an combustion process destroys the recovered vapors. The equipment is sized and priced to accommodate the maximum expected loading rate. Since all terminals want to load at similarly high rates, basic equipment costs will not vary much among the terminals. Any variation in additional expenses is determined by the configuration of each site and the effort needed to provide auxiliary power, supplemental fuel, an appropriate and safe location for the control equipment, piping to carry recovered vapors to the controls and any improvements to the loading dock needed to accommodate the additional equipment. Operating costs will vary by terminal and are directly related to the volume of product loaded and the vapor recovered.

General Public

The cost of these controls may add up to two cents per gallon to the cost of gasoline transported to eastern Oregon and Washington. Since barge transported gasoline accounts for about 43% of this area's gasoline inventory, the net impact would be less than one cent per gallon overall. This cost may not be reflected in the sale price at the retail outlet, as gasoline east of the Cascades is often priced more cheaply than gasoline sold in the Portland area, even though there are additional handling and storage costs.

Small Business

No small businesses will be directly impacted by the proposed regulation. Small businesses east of the Cascades that purchase gasoline may experience a retail price increase under the same circumstances experienced by the general public.

Given the size of some of the terminals in the Portland market and business considerations affecting their operations, it is likely that a market opportunity would be developed for a small business to provide vapor control services as a result of the adoption of this rule. We anticipate that it would be

more economic for the smaller terminals to effectively share the capital costs by contracting with a vendor to provide vapor recovery services. The benefits to this business would be based on how many terminals would contract for this service and how efficiently the operation was managed.

Large Business

In 1997 three of the largest Portland area bulk terminals prepared a cost effectiveness analysis to determine a local standard for RACT (Reasonably Available Control Technology). These analyses assumed completion of the cross-Cascade pipeline in the year 2000 and accelerated the depreciation schedule accordingly. If a typical depreciation schedule is used, the total annual cost, annual capital costs plus operating expenses, for a carbon adsorption process ranges from $304,890 to $713,801 while for a flare control device the annual costs range from $374,247 to $644,934.

To determine costs for the remaining seven terminals a price estimate was obtained for an 8000 barrel per hour marine vapor control system. Cost assumptions and methodology were applied from EPA's "Control Cost Manual". For the remaining four terminals total annual costs range from $332,198 to $333,380 for a carbon adsorption system. For a flare control, costs range from $247,676 to $253,919.

The greatest costs in the previous analysis are associated with the smaller terminals that would find a portable vapor control service more economic. A portable control device (flare) could be used at these terminals to eliminate the need to invest capital in a device that would not be as heavily used as at the larger terminals. The total annual costs range for this system range from $89,971 to $210,633. The fiscal impact associated with a portable system would drop further if the Vancouver terminals and/or any other larger Portland terminal also decided to use this service instead of installing a fixed site system.

Some of these sources will see their air pollution permit fee assessments change as a result of the reduction in emissions. Industrial sources paying Title V emission fees based on volume of pollutants emitted will see that assessment reduced. Some Title V sources could fall below the applicability threshold for Title V and become subject only to the state Air Contaminant Discharge Permit requirements and fees. As a group, the terminals could see a net reduction in permit fees of up to $19,714 per year.

Local Governments

There is no direct impact to local governments. The cost of gasoline purchases may be affected as outlined above for the general public and small businesses.

State Agencies

- DEQ
  - FTEs 0.16 NRS4
  - Revenues ($ 20,161)
  - Expenses $ 31,613

- Other Agencies
  No direct impact. The cost of gasoline purchases may be affected as outlined above.

DEQ costs are associated with the need to rewrite the permits to reflect the requirements of this rule and additional inspection time at the terminal to determine compliance. The permit revisions are a one time activity (0.157 FTE) costing about $31,020.

Assumptions

The portable control equipment is designed to accommodate loading rates of 6,000 barrels per hour. The permanent facility could handle loading rates up to 8,000 barrels per hour. Calculation of costs are based on the protocols and assumptions oultined in EPA's Office of Air Quality Planning and Standards "Control Cost Manual, 1996 edition". The costs and estimating methodology in this manual are directed toward a study estimate of ± 30 percent accuracy. All capital costs are adjusted for a capital recovery factor that reflects amortization and the time value of money. The depreciation schedule is assumed to be 10 years and the interest rate for borrowed money is assumed to be 10%.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

Attachment B-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Marine Loading Vapor Control

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

This rule is intended to reduce the emission of volatile fuel vapors associated with the loading of gasoline into marine vessels in the Portland area.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program? ☒ Yes ☐ No

a. If yes, identify existing program/rule/activity:

The requirement to utilize vapor control when loading gasoline will be implemented through the use of permits issued under the Title V Industrial Source Permit Program and the Air Contaminant Discharge Permit Program. Both of these programs are existing activities identified in the LCDC-Approved DEQ State Agency Coordination (SAC) agreement.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? ☒ Yes ☐ No (if no, explain):

c. If no, apply the following criteria to the proposed rules.

Not applicable

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The permitting programs to be used to implement the requirement for vapor control are covered by a SAC agreement, as explained under 2a.

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Not applicable

Division | Intergovernmental Coordinator | Date 11/3/99

Questions to be Answered to Reveal
Potential Justification for Differing from Federal Requirements.

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

Yes. The Environmental Protection Agency has established Reasonably Available Control Technology (RACT) standards for marine tank vessel loading operations. Large marine terminals that load either 200 million barrels of crude oil or 10 million barrels per year of gasoline must reduce emissions of volatile organic compounds by 95 percent.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

These standards are performance based, e.g., emissions of volatile organic compounds must be reduced by 95 percent by weight, and reflect the capability of current technologies to achieve the reductions.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

No. The federal RACT standard for marine vessel loading is targeted towards very large bulk gasoline terminals but did not consider how smaller facilities may nonetheless make a significant contribution to air quality degradation. None of the Oregon terminals meet the throughput threshold specified in the federal rule. However, collectively these terminals emit over 600 tons per year of ozone precursors that contribute to recently recorded exceedances of the ozone standard in the Portland area. Emissions from these facilities represent one percent of all VOC pollution in the airshed based on the 1992 emission inventory for the Portland ozone maintenance plan and are the largest source of uncontrolled industrial emissions in the area. A Governor's Task Force charged with developing the Portland ozone maintenance plan considered over 140 control strategies, selected the most efficient and cost effective strategies to implement and still acknowledged that emission reductions from marine loading of gasoline would be critical to making the entire plan work.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

As the Portland ozone maintenance plan was developed in the early 1990s, emissions from barge loading was identified then as a large source of air pollution that needed to be reduced. The most cost-effective approach relied upon the construction and operation of the cross-Cascades pipeline. However, the process for approval of the pipeline slipped from early projections. Rising controversy over whether the pipeline should be built led to speculation that operation would be delayed by years of litigation, even if it was approved for construction. In the meantime, some terminals decided to install control equipment while others have forestalled making any decisions on capital investment until the situation is clarified. This has resulted in a situation where some operators have installed the controls, and incurred the costs, while others have not. This rule will establish requirements for marine vapor control in the Portland area and eliminate uncertainty about what is expected from the terminals and barge companies.

Meeting the standards outlined in the proposed rule should preclude the necessity for further requirements and controls on this activity to meet ozone pollution standards.

5. Is there a timing issue that might justify changing the time frame for implementation of federal requirements?

Not applicable

6. Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

The proposed requirement increases the certainty that the federal air quality standards will be met through 2006.

7. Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

Many other sources of ozone pollution in the Portland area, including businesses and individuals, have made commitments to reduce emissions of ozone precursors to ensure that Portland area air quality will continue to be healthful. For instance, large industry has been required to install emission controls without consideration of cost; since 1974, motor vehicle owners have been required to maintain their cars and have them inspected every two years; gas station owners have been required to install and maintain Stage II vapor recovery systems; and manufacturers of paint, other architectural coatings and consumer products have been required to reengineer their products to low fuming

formulations. This rulemaking ensures that the efforts made by others will be matched by the contribution that had been expected from this sector.

8. Would others face increased costs if a more stringent rule is not enacted?

If barge loading of gasoline continues to remain uncontrolled other steps will be necessary to ensure that the Portland area continues to meet federal air quality standards. There is no larger source of uncontrolled emissions in the Portland area. Over the past twenty years the most feasible and cost effective strategies have been identified and implemented to improve the air quality in the Portland area. Reductions in emissions from barge loading were identified as a critical strategy within the ozone maintenance plan. Failing to secure emission reductions from marine loading of gasoline would force a second look at other less effective or more costly strategies to maintain air quality. For example, reformulating gasoline to enhance air quality could be required but at a cost of about $0.14 per gallon and a 3% fuel economy penalty. The net cost effectiveness of this strategy is about $5,000 per ton of pollution reduced compared to between $857 to $3,859 per ton for marine vapor controls.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

No.

10. Is demonstrated technology available to comply with the proposed requirement?

Yes. For instance, one terminal in the Portland area already uses vapor recovery during barge loading.

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain?

The proposed requirement meets commitments established in the Portland ozone maintenance plan, which is effectively a pollution prevention plan. Should the Portland area fail the ozone standards, additional air pollution control strategies would have to be implemented. These strategies could include stringent industrial controls (at upwards of $18,000 per ton of pollution reduced), reformulated gasoline requirements (at $5,000 per ton) and congestion pricing of highway travel (at $4,000 per ton). Marine vapor control at between $800 to $3,800 per ton of pollution reduced is a more cost-effective strategy.

Attachment B-5

State of Oregon
Department of Environmental Quality **Memorandum**

Date: November 12, 1999

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Marine Loading Vapor Control, OAR 340-232-0110; State Implementation Plan, OAR 340-200-0040

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules and rule amendments regarding loading of fuel products at bulk gasoline terminals. Pursuant to Oregon Revised Statute (ORS) 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

Gasoline is loaded onto barges in the Portland area for transport within the harbor, to coastal ports and to destinations elsewhere on the Columbia and Snake Rivers. Gasoline vapors are allowed to escape to the outdoor atmosphere during loading resulting in annual emissions of over 600 tons per year of ozone precursors. This proposal would require vapor recovery controls for loading gasoline and, under certain conditions, other fuel products onto barges. The Portland area is officially classified as in attainment with the ozone standard, having completed a ten year maintenance plan detailing commitments to continuing healthful air quality. Securing emission reductions from marine loading of gasoline or equivalent sources was identified as a commitment within the plan.

The Department has the statutory authority to address this issue under ORS 468A.035. The proposed rules implement ORS 468A.025. If adopted, these rules will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

Attachment A	The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
Attachment B	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
Attachment C	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
Attachment D	The actual language of the proposed rules.

Key Words & Acronyms:

Maintenance Plan:	A maintenance plan is part of the redesignation to clean air status and must demonstrate how the applicable air quality standard will continue to be met for at least ten years. The plan contains additional measures that may be necessary to ensure continued healthful air quality.
Ozone	A strong smelling, pale blue, reactive, toxic gas consisting of three oxygen atoms. It is a product of the photochemical process involving the sun's energy. Ozone exists in the upper atmospheric layers as well as at the earth's surface. Ozone at the earth's surface causes numerous adverse health effects and is a criteria air pollutant under the federal Clean Air Act. It is a major component of smog.
RACT	Reasonably Available Control Technology. An emissions standard for industrial facilities which represents the lowest limitation a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.
VOC	Volatile Organic Compounds. Hydrocarbon compounds which exist in the ambient air. VOCs contribute to the formation of smog and/or may themselves be toxic. VOCs often have an odor, and some examples include gasoline, alcohol and the solvents used in paints.

Hearing Process Details

The Department is conducting a public hearing at which comments will be accepted either orally or in writing. The hearing will be held as follows:

Date: December 16, 1999
Time: 7:00 p.m. (Question and answer session from 6:30 p.m. to 7:00 p.m.)
Place: State Office Building, Room 140, 800 NE Oregon, Portland

Deadline for submittal of Written Comments: 5:00 PM, December 21, 1999

Department staff will serve as the Presiding Officer at the hearing.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attn: Kevin Downing, 811 S.W. 6th Avenue, Portland, Oregon 97204.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are submitted as early as possible to allow adequate review and evaluation of the comments submitted.

What Happens After the Public Comment Period Closes

Following close of the public comment period, the Presiding Officer will prepare a report that summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report. The public hearing will be tape recorded, but the tape will not be transcribed.

The Department will review and evaluate the rulemaking proposal in light of all information received during the comment period. Following the review, the rules may be presented to the EQC as originally proposed or with modifications made in response to public comments received.

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is February 11, 2000. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

Background on Development of the Rulemaking Proposal

Marine Loading of Gasoline

Bulk gasoline terminals in the Portland harbor serve as distribution centers for petroleum products. Gasoline and other liquid petroleum products are received by pipeline, ocean barge and tankship and then shipped by truck and pipeline to points in western Oregon and by truck and river barge to eastern Washington and Oregon. The transfer of gasoline from one transport mode to another can result in the release of air pollutants that contribute to ozone pollution problems. While regulations requiring vapor controls when loading trucks at the terminals have been in place since 1978, barge loading has remained uncontrolled because of concerns regarding safety, jurisdiction, technical feasibility and financial cost.

Emissions of volatile organic compounds (VOCs) can also occur when barges are loaded with any other liquid cargo and the previous load was a volatile fuel product such as gasoline. So-called "switch loading" of differing fuel products, even those with fairly low volatility, results in the release of ozone precursors as the newly loaded product displaces the volatile vapors from the previous load of gasoline.

Why is there a need for the rule?

The Portland area has 7 bulk gasoline terminals with 9 marine docks. Over the past three years emissions from barge loading at these terminals has averaged 632 tons per year. In the most recent emission inventory (1992) barge loading accounted for more than 1 percent of total emissions from all human caused sources of volatile organic compounds. The potential for increases in barge loading is closely tied to the overall economy. Since the 1992 inventory was completed, growth in the barge loading activity has occurred and is expected to continue. The Portland ozone maintenance plan projected emissions from barge loading to increase at a 1.6 percent average annual growth rate from 1992 through 1998. Actual barge loading has increased at an average rate of 3.2 percent per year during this same time. The draft environmental impact statement for the cross-Cascade pipeline projected growth in barge shipments of gasoline up the Columbia River to increase at an average annual rate of 2.4 percent from 1996 to 2009 in the no-build scenario.

Barge loading was identified as a significant source of ozone precursor emissions in the Portland ozone maintenance plan. The Department assumed within the maintenance plan that construction of a cross-Cascades pipeline from Woodinville to Pasco, Washington would reduce VOC emissions from barge loading in the Portland area by 90% by 1999. The pipeline would offer lower transportation costs and transport a large share of the gasoline to the eastside gasoline terminals that the river barges currently service.

By the spring of 1999 the pipeline development process was proceeding but behind schedule. A rupture and explosion in June on the Olympic Pipeline in Bellingham led the Olympic Pipeline Company, also the proposed builder and operator of the cross-Cascades pipeline, to withdraw its application for the cross-Cascades pipeline. If the proposal is revived, the process will have to begin anew, leading to many years of investigation, research, evaluation and review before this pipeline could be approved for construction. This rulemaking is intended to achieve the emission reductions that cannot now be obtained from the operation of a pipeline across the Cascades.

Portland Ozone Maintenance Plan

Many approaches to reducing ozone pollution in the Portland area have been considered and

implemented over the past twenty years. The 1996 Portland ozone maintenance plan was developed from an initial list of over 140 potential strategies to reduce the emission of ozone precursors. The Governor's Task Force on Reducing Motor Vehicle Emissions evaluated these strategies for environmental benefit, economic impact and feasibility. The final recommendation made by the Task Force encompassed strategies affecting a variety of pollution sources including motor vehicles, lawn and garden equipment, marine engines, consumer products, architectural coatings, options for work commuting and autobody refinishing. The plan accounted for emission benefits from national strategies like improvements in motor vehicle pollution control systems. The plan also relied upon the ongoing benefits secured from previous emission reduction strategies like vapor recovery at gas stations and gasoline tank truck loading facilities, lower vapor pressure for gasoline sold in the area and the required installation of pollution controls at a variety of businesses. The following table provides a representative listing of some of these strategies and the cost effectiveness associated with each.

Activity Category	**Strategy**	**Cost Effectiveness ($ per ton of VOC reduced)**
On road vehicles	Enhanced Inspection and Maintenance	$4,964
Non road engines	Small engine emission standards	$280
Non road engines	EPA Phase I marine engine emission standards	$1,026
Area sources	Autobody refinishing	$0 benefits balance costs
Area sources	Architectural coatings	$12,800
Area sources	Consumer products	$4,900
Area Sources	Stage II Vapor Recovery	$1,000
On road vehicles	Employee commute options	$ (445) benefits outweigh costs
Industry	Process controls at semiconductor plant	$18,000

Recognizing the critical need for reductions from barge loading, the plan also committed to securing equivalent emission reductions if the pipeline was not in place by 1999. Most sources of volatile organic compounds within the Portland area are already required to control emissions. Industrial activities ranging from paper coating, printing, iron and steel manufacturing, solvent metal cleaning to waste disposal must use pollution controls like thermal oxidation, high solids coatings, water based coatings and combustion tuning, significantly reducing emissions of ozone precursors. Among all the uncontrolled industrial source categories contributing to ozone pollution, barge loading, at 903 tons per year under current permit levels, far exceeds the amount from the next largest uncontrolled category, bakeries, at 285 tons per year.

The need for the emission reductions from barge loading is further underscored by air quality monitoring reports in recent years. The data show the Portland area continuing to experience exceedances of the preexisting 1 hour ozone standard (3 in 1996, 3 in 1998) and the new 8 hour ozone standard (4 in 1998). The Department did find that barge loading activity may have contributed to the ozone exceedances in 1996 because of the heavy volume loaded in the days prior. This impact occurred despite the Department's efforts to predict ozone exceedance days and the terminals' willingness to avoid loading on days predicted to be conducive to exceedances.

Marine Vapor Control

A typical vapor control system includes the following elements: 1) vapor collection piping from all cargo tanks on the barge; 2) piping to transfer displaced vapors, usually ashore; and 3) vapor processing equipment, also usually ashore. Vapor processing technology is available in a number of forms but can be broadly broken down into two categories, recovery/reuse and recovery/combustion. Pollution control efficiencies can be quite high. Recovery/reuse technologies like carbon bed adsorption are effective at reducing VOC emissions about 95 percent by weight. Recovery/combustion technologies achieve 98 percent and greater control efficiencies. Recovery/reuse technologies do allow for the recovery of the product, which has an economic benefit for the terminal. However, operational and maintenance costs are high for this approach. The preferred technology appears to be combustion. There are emissions from the combustion process but they are negligible compared to the reductions otherwise obtained. For instance, if all terminals chose to comply with the Department's proposed rule using combustion technology, 619 tons of VOC from barge loading would have been eliminated, offset by 13 tons of VOC and 5 tons of nitrogen oxides from the combustion process.

Regulation of Marine Loading of Gasoline

EPA first proposed marine loading controls in the early 1970s but delayed its effort to resolve issues about safety, cost and effects on interstate commerce. The National Research Council conducted a comprehensive study of the issue in 1987 and concluded that controls were technically feasible, provided that the Coast Guard promulgated safety requirements. The Coast Guard issued its safety requirements in 1990. In that same year amendments to the Clean Air Act clarified EPA's authority to regulate emissions from marine vessels. The agency followed through by adopting categorical RACT (reasonably available control technology) guidelines in 1995. The rule required controls on facilities that load more than 420,000,000 gallons of gasoline per year. The rule also established performance requirements for the control of air toxics using maximum achievable control technology (MACT).

None of the terminals in the Portland area meet the threshold for compliance under the federal requirement. However, Oregon Administrative Rule 340-232-0040 requires a case-by-case review of RACT for major sources for which no categorical RACT exists. In 1997 the Department requested a RACT analysis by the three terminals covered under this rule. The results of those analyses regarding economic feasibility are described in the following section on "Cost Effectiveness".

Vapor recovery technology has been readily available since the late 1980s and has been required in several jurisdictions across the country including New Jersey, Pennsylvania, Texas, Louisiana, San Francisco Bay, San Luis Obispo and the Los Angeles/Long Beach basin.

Cost Effectiveness of Controls

A primary factor in determining whether to regulate the emissions from loading gasoline onto barges has been the cost-effectiveness of the controls, typically expressed as dollars per ton of pollution reduced. These costs have tended to be high for Portland area terminals because they are relatively small compared to other facilities around the country that have been required to install marine vapor controls. Marine vapor control systems are sized and priced according to the maximum anticipated loading rate. Since all terminals want to load at a high rate, they would all need to build large-scale controls. The larger terminals would have advantage of spreading the capital cost over a larger throughput.

Local information about cost effectiveness, reflecting conditions specific to local terminals, is available from the 1997 RACT analysis required of the larger Portland terminals, Chevron, Equilon and GATX. The RACT analysis was based on the expected completion date of the cross-Cascade pipeline assuming a 2.5 year depreciation schedule for the control equipment. Under this scenario the terminals reported cost effectiveness ranging from $5,750 to $7,900 per ton for carbon adsorption technology and from $4,700 to $9,290 per ton of pollution reduced using a flare technology. Since the pipeline is not going to be constructed in the near term, the capital recovery factor was adjusted, in the analysis shown below, to reflect the typical depreciation cycle for this equipment, 10 years. It is also important to note that the Environmental Protection Agency had suggested $2,000 per ton as the cost of RACT for marine loading in 1979. Adjusted for the effects of inflation, the cost to meet the RACT standard for marine loading would be about $4,500 per ton today.

Cost per Ton of VOC Reduced

Carbon Adsorption (Recovery/reuse)	RACT with 10 year depreciation[1]	Fixed Site Control, EPA cost assumptions[2]	Portable Control, EPA cost assumptions[3]
ARCO	NA	$ 5,317	NA
Chevron	$ 2,236	$ 1,072	NA
Equilon	$ 2,866	$ 3,147	NA
GATX	$ 3,536	$ 2,636	NA
Mobil	NA	$ 3,205	NA
Time Oil[4]	NA	$ 4,371	NA
Tosco	NA	$ 11,975	NA
Flare (Recovery/combustion)			
ARCO	NA	$ 3,859	NA
Chevron	$ 1,959	$ 857	NA
Equilon	$ 3,410	$ 2,325	NA
GATX	$ 4,005	$ 1,963	NA
Mobil	NA	$ 3,205	$ 1,797
Time Oil [4]	NA	$ 3,190	$ 1,795
Tosco	NA	$ 8,568	$ 2,266

The first column represents cost effectiveness based on assumptions provided by the terminals but projected over a typical life span of the equipment. The cost effectiveness from this analysis compares very favorably to the RACT analysis provided by the Oregon Title V terminals. To compare the relative impact of controls on terminals that were not required to complete a RACT analysis the Department obtained a standard quote for both types of controls and applied control cost methodology based on EPA guidance to all the terminals in the Portland area. This analysis is shown in the second column and further illustrates that there is a relatively steep decline in cost effectiveness as annual throughput decreases. The third column shows cost effectiveness relying upon a portable control device. This information is discussed in more detail in the discussion on "Seasonal Control".

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1 Based on RACT analyses provided by select terminals in 1997 but with 10 year depreciation schedule.

2 Based on cost of fixed location equipment from supplier and cost methodology outlined in EPA "Control Cost Manual".

3 Based on cost of portable equipment from supplier and cost methodology outlined in EPA "Control Cost Manual". Assume 6000 barrel per hour loading and a Coast Guard required dock safety skid located at each terminal.

4 Cost effectiveness is calculated based on controls at the Linnton facility only. If regulated, barge loading of affected products (i.e., gasoline) would likely cease at the St. Johns facility.

How was the rule developed?

Rule Language Development

The Department consulted with air pollution control authorities in jurisdictions where barge loading is regulated to identify the necessary elements of a feasible rule. Based on this work, staff developed an initial proposal to address air quality concerns in the Portland area, keeping in mind the cost effectiveness of the controls. The proposal called for controls year-round for the larger terminals and at the smaller terminals only during the ozone season. Including the smaller terminals was necessary to obtain an air quality benefit equivalent to that of the pipeline. The seasonal requirement was proposed assuming that it would lead to development of contractual arrangements with the larger controlled terminals to control vapors rather than the construction and off-season idling of control equipment. The proposal also called for vapor control during all lightering events. Lightering is the term used to describe the ship-to-ship transfer of cargo.

This proposal was presented in a series of meetings to representatives of the bulk terminals, shipping companies and interested and affected persons in order to identify any concerns with the draft regulation. Industry concerns centered on the definition of applicable fuel products, the effective date of the rule and the practicality of complying with a seasonal requirement. The public was concerned with cumulative effects of exposure to the pollutants found in gasoline vapor and wanted to secure as soon as possible the maximum protection from exposure to the vapors associated with gasoline loading. Concerned citizens urged the Department to more thoroughly investigate the feasibility of portable controls to make complete control of these emissions more economically viable.

Fuel Product Applicability

The terminals preferred to narrow the definition of applicable fuel products to only include gasoline as it is the most volatile product loaded and represents the bulk of the petroleum products transported by barge. Although the original proposal is proactive and aligns with California applicability, shipping reports on the Columbia River indicate that gasoline is the single largest contributor, about 99%, to emissions among petroleum products loaded. There are no refineries in Oregon and the mix among petroleum products shipped in the state is not expected to change. Limiting applicability to when gasoline is loaded or when the previous load was gasoline would provide the needed environmental benefit and simplify compliance determinations for both the terminals and the Department.

Effective Date

Terminal operators expressed concern about the proposed June 2001 effective date. They noted that in addition to the time required for engineering and construction, additional time is needed to secure the necessary permits including greenway construction approval. They requested an additional six months to comply, i.e., November 2001. Citizens urged an earlier compliance date of August 2000.

There are a number of steps involved for the terminals to comply that involve permitting, engineering, construction and testing. Permits will be required from the Division of State Lands (DSL) and the Corps of Engineers if modifications are required for the marine dock and construction occurs in the river. Construction permits would also be required from the city of Portland, including approval to build in the Willamette River greenway. The city of Portland permitting process could take 3 to 5 months. The DSL/Corps process could also take up to 5 months. The city of Portland provides for an expedited review if an emergency exists. The DSL/Corps process does not have a formal expedited process but recommends collectively briefing all affected agencies to speed the review time. Permit review for each of these tracks can occur simultaneously. An engineering firm that had bid for one Portland terminal's vapor recovery system estimated 50 weeks for construction, from the design phase to operational testing. It appears, then, that at least 15.5 months would be required to bring a vapor recovery unit into operation starting from the design stage.

The Department considers these pollution reductions critical to maintaining good air quality and will work to support expedited permit reviews by other agencies in order to reduce the risk of exceedances during future ozone seasons. Many of the steps needed to install and operate control devices cannot be accelerated and are otherwise not sensitive to any compliance incentives the Department could offer. The June 2001 effective date provides a realistic time to comply while minimizing the possibility of poor air quality occurrences.

Seasonal Control

The major concern raised by the small terminals and one mid-sized terminal was the financial impact of requiring controls, seasonal or otherwise, that would be cost prohibitive. The terminals did not consider contractual arrangements a feasible approach to meet seasonal control requirements and the installation of expensive controls would compromise their ability to stay in business. Some of these terminals act as agents for other's products and it would be especially difficult to pass along those costs. One terminal pointed out that, as a third party operator, its Portland tank operation does not support its own company gas stations and so the company had less incentive to make substantial capital investments. If the market could not support passing along these costs, the company would be inclined to close the facility because it is not essential to their core business. This would result in a loss of storage capacity for fuel products in the

Portland area and the region. Another terminal pointed out that commitments made in contracts to store other company's products may extend into and beyond the summer months. Not being able to provide complete services hampers their ability to secure these contracts. The terminal argued that the seasonal control requirement is potentially costly enough to effectively be a prohibition on barge loading during the summer months. This would have the detrimental effect of diminishing their customer base and otherwise threatening their ability to stay in business.

Citizens supported an approach that would require vapor recovery on all terminals year round to maximize protection against air toxic exposure in nearby neighborhoods. Their concern about cumulative impact of toxic emissions from these sources, they felt, justified high levels of control.

The Department researched the issue further and found that costs could be reduced and cost-effectiveness improved for these terminals by sharing the capital costs through the use of a portable emission control system. Portable units have been used in other parts of the country as a primary and backup control device intended to meet similar regulatory requirements and are expected to meet the same performance standards as a permanently sited system. A portable device improves the cost-effectiveness to $1,795 per ton reduced. A marine vapor control service could be provided by a consortium of interested local terminals or by an independent business.

There are also two small terminals located in Vancouver. Both terminals have the potential within their permits to significantly increase gasoline loading above current levels. The adoption of a marine vapor control requirement by the state of Oregon may shift gasoline loading activity to these terminals. Since the Washington terminals share both the same airshed and economic market as the Portland terminals, the Southwest Washington Air Pollution Control Authority has agreed to adopt similar requirements as those adopted in Oregon. A portable device would be an attractive approach to compliance for these facilities as well, further improving the overall cost effectiveness.

Lightering

Some fuel products enter the Portland area gas distribution system by ocean going barge and tankship. Lightering of petroleum products may be utilized to avoid a transfer to the onshore terminals when the product is ultimately destined for upriver terminals. It may also occur to reduce the draft on incoming vessels to allow them to tie up to the docks at the terminals. Lightering can occur offshore, at designated anchorages in the river and alongside ships berthed at docks.

Lightering has not been a high volume activity in the Portland area, releasing about 8.5 tons of VOCs per year. During the summer of 1999 the volume of fuel product lightered has increased

as a result of the Bellingham pipeline explosion. During the ensuing investigation, the two terminals in Bellingham have not been able to transport product through the pipeline and the rest of the pipeline has been subject to a precautionary reduction in capacity. As a result, the Oregon terminals are receiving a larger percentage of their product by ocean tank ship. Petroleum shipments are arriving on any available ship to meet the immediate need. These ships, fully loaded, may ride deeper than the draft available at the terminal docks and so require some lightering to offload at the dock. It is expected that as the situation matures, ships with appropriate draft will be contracted for this trade and lightering will decline to historic levels.

Discussions with petroleum shippers in other jurisdictions where lightering regulations are in place indicated that there are no feasible controls when lightering occurs away from a terminal. Tidewater Barge, the only barge company providing petroleum shipping services in the Portland area, investigated the feasibility of lightering controls. To provide for vapor control during lightering, a barge would be removed from service and a carbon adsorption unit would be installed on board. The cost of installing and operating this device would be higher than for a similar land-based system due to a number of factors, including the revenue lost with removing the barge from more lucrative transport service, the need to supply auxiliary power, tugboat transfer to lightering locations and storage of the barge when not in use. For vessels that lighter at a terminal dock, the terminal's vapor control system can be used to control emissions. Since the costs are relatively high for the loading operations that occur away from a terminal and the air quality impact is not significant, the Department is proposing to prohibit lightering on Clean Air Action days where neither vessel is berthed at a terminal dock.

What is proposed by the rule?

All bulk gasoline terminals operating in the Portland area will be required to reduce by at least 95 percent the emissions of gasoline vapors when loading marine vessels, including lightering when either vessel is berthed at their dock. Lightering that occurs at other locations will be prohibited on Clean Air Action days[1].

Copies of documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon.

These include: *Controlling Hydrocarbon Emissions from Tank Vessel Loading*, National Research Council, 1987

[1] Clean Air Action days are announced by the Department when meteorological conditions are such that ozone formation is enhanced and the probability of an exceedance of the standard could be expected. The declaration of such days leads to a number of voluntary and required actions by businesses, local governments and individuals to minimize the release of ozone precursors.

Draft Environmental Impact Statement, Cross Cascade Pipeline, U.S. Forest Service & Washington State Energy Facility Site Evaluation Council, September 1998
Hazardous Air Pollutant Emissions from Gasoline Loading Operations at Bulk Gasoline Terminals, American Petroleum Institute, October 1998
OAQPS Control Cost Manual, Fifth Edition, U.S. Environmental Protection Agency, February 1996

Please contact Kevin Downing (phone and email address noted below) for times when the documents are available for review.

Who does this rule affect including the public, regulated community or other agencies, and how does it affect these groups?

The rule directly affects bulk gasoline terminals in the Portland area. Terminals will install vapor recovery control equipment in order to reduce emissions by at least 95 percent. Barge companies will have to ensure that their river barges are leak free, vapor tight and in good working order to transport fuel from these terminals. Fuel costs could increase by 1 to 2 cents per gallon for product transported east of the Cascades because of the increased costs associated with installing and operating the vapor recovery equipment. These costs may or may not be reflected at the retail sale.

The environmental benefits will be substantial. We project overall VOC emissions will be reduced by upwards of 98 percent, depending on the control technology employed. Based on the loading patterns reported by the terminals over the past three years and assuming the use of combustion controls, the net emissions would have been 25.6 tons per year VOC and 5 tons of NOx, reduced from 632 tons per year of VOC. A secondary benefit is the reduction of air toxics, which account for about 4.8 percent of gasoline vapor by weight. These include alkylated lead, benzene, ethylene dichloride, polycyclic organic matter and toluene. Emissions of air toxics are reduced with vapor control technology at an equal, if not greater, efficiency than VOCs. Benzene emissions, the largest volume and one of the most potent of these toxic compounds, would have been reduced 99 percent to 226 pounds from 5 tons per year otherwise.

How will the rule be implemented?

The proposed effective date of the rule is June 1, 2001. The permits for the affected bulk gas terminals will be revised to add permit conditions reflecting the adopted requirements. Compliance will be determined via the monitoring and recordkeeping requirements outlined in the proposed rule and evaluated following typical departmental inspection procedure and practice.

Are there time constraints?

The Portland ozone maintenance plan projected a significant reduction in ozone precursors by 1999 from barge loading through the operation of a cross-Cascade pipeline. Air quality monitoring data from recent years show the Portland area continues to experience exceedances and near exceedances of the preexisting 1 hour and the new 8 hour ozone standard. While the area has not violated the 8 hour ozone standard, the preponderance of these exceedance events highlights the need for achieving all emission reductions identified in the plan, including those from barge loading.

Contact for More Information

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact:

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This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

Attachment C

State of Oregon
Department of Environmental Quality Memorandum

Date: December 22, 1999

To: Environmental Quality Commission

From: George Davis and Kevin Downing

Subject: Hearings Report for Marine Loading Vapor Control rule, OAR 340-232-0110

A hearing was held to accept testimony on proposed rules that will require the control of Volatile Organic Compounds (VOC) emissions that occur when gasoline vapors are displaced from marine tank vessels during loading.

On December 16, 1999, a public hearing was held at the State Office Building, Room 140, 800 N.E. Oregon Street, Portland. Twenty-five persons attended, five persons presented oral testimony. Two persons at that meeting presented written testimony.

The following report provides a summary of written and oral comments made, including written comments received outside of the public hearings. Nineteen persons submitted additional written testimony outside of the public hearings. Comments are grouped by similar subject areas. The persons who made the comment are identified by a code, which is keyed to the entries in the Testimony Reference table.

Testimony References

No.	Oral Testimony	Written Testimony	Name and Affiliation
O1	YES	YES	John Williams Rebound 12770 SW Foothills Dr. Portland
O2	YES	NO	Nancy Cushwa 1427 N.W. 23rd Portland
O3	YES	YES	Robert Davies 2518 N.W. Savier Portland
O4	YES	YES	Sharon Genasci NW District Association Health and Environment Committee 2217 N.W. Johnson Portland
O5	YES	YES	David Paul Paul & Sugerman, PC 520 SW 6th #920 Portland

Written Testimony Received

No.	Name and Affiliation
W1	Paul Mairose SW Air Pollution Control Authority 1308 NE 134th Street Vancouver, WA
W2	May Avery 4424 SE Roethe Rd. Unit 4 Portland, OR
W3	Robert D. Elliott SW Air Pollution Control Authority 1308 NE 134th Street Vancouver, WA
W4	Jerry Holmes Chevron Products Co. Willbridge Terminal Portland, OR
W5	J. Michael Paisley Time Oil Co. 2737 West Commodore Way Seattle, WA
W6	Bob and Mary Holmström 2934 NW 53rd Drive Portland, OR
W7	John Sherman Terminal Superintendent Tosco 5528 NW Doane Avenue Portland, OR
W8	Sarah Doll Oregon Environmental Council 520 SW 6th Avenue, Suite 940 Portland, OR
W9	Marilyn Mangion 2138 NW Lovejoy Portland, OR
W10	Stacey Vallas 2856 NW Thurman St. Portland, OR
W11	Carol Dansereau Executive Director Washington Toxics Coalition 4629 Sunnyside Ave N, #540 E Seattle, WA
W12	Karl Anuta Northwest Environmental Defense Center 10015 SW Terwilliger Blvd Portland, OR
W13	Gordon Lauderbach Terminal Superintendent ARCO 9930 NW St. Helens Rd. Portland, OR
W14	Robert Amundson 1616 SW Harbor Way Portland, OR

W15 Martha Gannett
2466 NW Thurman St.
Portland, OR

W16 Bart A. Brush
President
Northwest Environmental Defense Center
10015 SW Terwilliger Blvd
Portland, OR

W17 Brendan Kane
OSPIRG
1536 SE 11th Avenue
Portland, OR

Testimony Summary/Issues **Whose Comment**

GENERAL COMMENTS ABOUT THE RULE

1. O1, O2, O3, O4, O5, W6, W8, W9, W10, W11, W12, W14, W15, W16, W17

Glad that DEQ was proposing a rule to control emissions from barge loading, but the rule does not go far enough.

2. W13

In principle, this terminal supports the rulemaking as a means to ensure long term attainment with federal air quality standards in the Portland ozone maintenance area with specific concerns about the proposal that need to be addressed.

3. O4

DEQ has delayed too long. Why hasn't DEQ protected public health all these years?

4. O5, W8, W10

It is extremely important from a public health perspective to begin requiring capture equipment for gasoline and other fuel emissions. Any disadvantages or inconveniences suffered by fuel companies are vastly outweighed by the benefits to Portland residents.

5. W5

Final rule needs to reflect the goals that were established for its justification, i.e., to capture four hundred tons of VOC emissions to compensate for the loss of the cross-Cascade Pipeline.

THE PROPOSED RULE REQUIRES A 95 PERCENT REDUCTION IN EMISSIONS; A HIGHER LEVEL SHOULD BE REQUIRED

6. O1, O2, O4, O5, W8, W9, W11, W12, W14, W16, W17

San Francisco requires 98.5 percent controls. Santa Barbara requires Exxon to reduce emissions by 99.8 percent. Portland deserves the same level of protection. Oregon should require 99 percent reduction in VOCs, as has been achieved elsewhere on the west coast. The goal should be zero percent pollution. State of the art technology should be required at all facilities.

THE PROPOSED RULE ONLY REQUIRES CONTROL OF GASOLINE EMISSIONS; EMISSIONS FROM OTHER FUELS SHOULD ALSO BE CONTROLLED

7. O1, O2, O3, O4, W15

Emissions of other fuel vapors, such as jet fuel and diesel fuel should also be required. Once installed, the equipment should be used for the maximum benefit of the airshed.

8. O3, W14

Benzene is a concern and is present in gasoline, jet fuel, diesel fuel and heating oil. DEQ should be concerned about the tons of benzene released from the tank farms. Benzene is toxic and was found to be 113 times one benchmark in a nationwide EPA study. DEQ should take every opportunity to reduce emissions of hazardous air pollutants.

THE PROPOSED RULE APPLIES ONLY IN THE PORTLAND AIR QUALITY MANAGEMENT AREA; IT SHOULD APPLY STATE-WIDE

9. O1, O2, O4, W9, W14, W15

There are oil terminals in other parts of the state that should also be controlled, such as the McCall dock and in Umatilla. Cascade Grain in Clatskanie is exempted from the rule, but it should not be as emissions could be transported into the Portland area. Oil companies should not have the opportunity to simply move outside the Portland metropolitan area to avoid compliance. The rule should apply statewide.

CONCERNS ABOUT SEASONAL APPLICABILITY

10. O4, O5, W6, W8, W9, W10, W11, W12, W15, W16, W17

The proposed rule should not allow a seasonal exemption; it should apply year-round.

Exposure to toxic air contaminants like benzene is a problem year round. Year round operation will add only marginally to overall costs as operational costs are much less than capital costs.

11. W5

Smaller terminals, facing much higher control costs, should be allowed to control ozone emissions only during ozone season when the threat is greatest.

EFFECTIVENESS OF PORTABLE DEVICE IS LIMITED BY LOGISTICS

12. W7

Sharing a control device appears reasonable but scheduling issues will make coordination very difficult.

EMISSIONS DURING LIGHTERING SHOULD ALSO BE CONTROLLED

13. O1, O2, O5

Lightering is only restricted on Clean Air Action Days. There should be a 100 percent prohibition of lightering. Lightering controls may be expensive, but that is "tough luck" for the oil companies. Emissions from lightering were not quantified in the staff report.

14. O4

Rule has been weakened by the oil companies; lightering is uncontrolled. Will DEQ monitor lightering?

15. O5, W6, W8, W11, W12, W15, W16, W17

Lightering must not become a method to avoid compliance. This rule should add language to monitor lightering activities and ensure that lightering does not become a substitute for compliance with these new rules.

16. O4, W6

Requirements should extend even to those vessels making first time visits to the area. How will DEQ enforce this requirement?

CONCERNS ABOUT NEEDING OR ALLOWING AN EMISSION OR THROUGHPUT EXEMPTION

17. W5

Small terminals face disproportionately higher costs for control. A terminal loading very few barges in a year will face substantially escalated costs of abatement. Exemptions exist in Oregon for other gasoline categories of VOC that are small emitters. A similar exemption based on throughput or emissions should be considered here.

18. O5, W8, W11, W12, W16, W17

A de minimis exception is bad policy and bad for the air. Deal with the emissions on an equitable basis. There can be no complaint of financial impact, given that every other major west coast port requires controls.

COMMENTS ON THE FISCAL IMPACT

19. W2, W15, W16

Supports adoption of the rule, even if it adds one or two cents per gallon to the price of gasoline. The market will absorb any minimum additional costs. People will continue to drive their cars with higher fuel costs and one or two cents will not make much difference.

20. O5, W8, W17

Based on experience in Washington and California, proposed rule would not increase the cost of gasoline.

CONCERNS ABOUT THE COMPLIANCE SCHEDULE

21. O3, O4, O5, W8, W9, W10, W12, W14, W15, W16, W17

Concerned that the rule will not be effective until 2001. Control equipment has been available for at least 12 years. The control equipment is available now, why wait until 2001 if it can be done sooner? The rule should become effective in August 2000. Southern California, northern California, Washington state and elsewhere implemented these regulations over ten years ago. The industries have been on notice for many months that proposed rules were under consideration. The essential infrastructure can be constructed and rendered operational with 40 to 50 weeks. The time schedule for implementation should be compressed.

22. O5, W8, W17

The permitting process with governmental authorities can be expedited by cooperation and taking advantage of concurrent processing of permits.

23. W4

The proposed compliance schedule is accurate and aggressive. Barge loading controls will require a unique system here. The controls are a complex unit that must reliably meet safety and regulatory requirements.

24. W6

Many previous regulations have incorporated a phased in schedule based on facility throughput. DEQ should implement a three-tiered schedule with high emitters coming into compliance according to the proposed schedule; low emitting west side terminals should be allowed additional two years; low emitting east side terminal allowed additional three years.

25. W7

The proposed schedule allows only 2 weeks of flexibility to deal with any disruptions in approval or construction, based on estimates for permit review and engineering and construction. DEQ should extend the compliance deadline four to six months or extend compliance deadline, by month, subject to completion of the permit review process by the city of Portland and DSL/Corps.

THE PROPOSED RULE ALLOWS A CHOICE OF CONTROL TECHNOLOGIES, VAPOR RECOVERY SHOULD BE THE PREFERRED CONTROL TECHNOLOGY

26. O4, O5, W8, W11, W12, W16, W17

Carbon adsorption allows the oil companies to recover product and recycle it; they should not burn it. Encourage carbon adsorption, not burning; oil companies will save money by recovering product. The cost of the recovered product should be reflected in the cost analysis.

CONTINUOUS EMISSION MONITORS SHOULD BE REQUIRED

27. O1, O2, O4

Commentor is skeptical of oil companies' veracity in reporting their own fuel throughput, control efficiency and the resulting emissions. Continuous emission monitors should be required to verify the control efficiencies. Emissions are going to be higher in the summer months and reliance on a single emission factor will not be sufficient to reflect the variability in emissions related to ambient temperature. The monitors will provide real time measurement of these emissions.

THE PROPOSED RULE ALLOWS TOO MUCH LEAKAGE FROM HATCHES

28. O1, O2

The proposed rule allows up to 10,000-ppm leakage from hatches and other seals. This standard would allow leaks of up to 10 percent. The Bay Area Air Quality Management District considers 100 ppm the appropriate emissions ceiling for process valves and pumps. DEQ should require less leakage.

PERMIT MODIFICATIONS MUST BE UNDERTAKEN PROMPTLY

29. O5, W8, W12, W16, W17

The permittees should be advised upon implementation of these proposed rules that permit modifications will be initiated by the Department, and permit modifications should be finalized on a timely basis. Lacking a binding requirement in federal law or the Oregon State Implementation Plan, the rulemaking should be amended to include a schedule for permit modifications.

CLARIFY THE APPLICABILITY OF SELECT PROVISIONS IN THE RULE

30. W1,W3

340-232-0110 (7) addresses uncontrolled lightering events but refers to "uncontrolled barge loading". For consistency, all references to uncontrolled barge loading in this section should be revised to refer to uncontrolled lightering events.

31. W13

340-232-0110 (1) places the sole responsibility for compliance with the rule upon the terminal owners or operators. This places an unrealistic burden on terminals forcing responsible operators to conduct operation and maintenance reviews of each vessel to ensure each vessel meets requirements. Recommends that both the vessel and terminal operator be responsible for compliance for the vessels and facilities within their control.

32. W13

"Liquid leak" is not defined. Suggest adopting dripping liquids definition from federal register 40 CFR60 Section 60.481.

33. W13

340-232-0110 (6) (a) requires only marine terminal operators to maintain records of loading events at terminals. Marine vessel operators should also be required to keep records of loading events at terminals.

34. W13

Commentor suggests adding exemption from control requirements when both the following conditions are met: 1) The vessel has been gas freed (regardless of prior cargo), and 2) When loading any products other than gasoline.

35. W13

Recordkeeping requirements in 340-232-0110 (6) (a) (E) should be amended to identify prior cargoes as gas freed when it has occurred. Gas freed should also be clearly defined as, for instance, when the concentration of VOC in the cargo bay has been measured with an OVA at a level less than 10,000 ppm expressed as methane.

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Marine Loading Vapor Control

Department's Evaluation of Public Comment

Testimony Summary/Issues **Whose Comment**

GENERAL COMMENTS ABOUT THE RULE

1. O1, O2, O3, O4, O5, W6, W8, W9, W10, W11, W12, W14, W15, W16, W17

Glad that DEQ was proposing a rule to control emissions from barge loading, but the rule does not go far enough.

The Department appreciates comments in support of the proposed rule and acknowledges changes proposed by the commentors.

2. W13

In principle, this terminal supports the rulemaking as a means to ensure long term attainment with federal air quality standards in the Portland ozone maintenance area with specific concerns about the proposal that need to be addressed.

The Department appreciates comments in support of the proposed rule. The concerns raised by this commentor and the Department's response are detailed in comments 32 through 35.

3. O4

DEQ has delayed too long. Why hasn't DEQ protected public health all these years?

The Department has taken steps to protect public health since the agency was first established. This rule constitutes the most recent step in a long line of regulatory measures affecting a variety of sources of volatile organic compounds. This history of protective measures extends back to the 1970s, all of which have been effective in reducing exposure to these air contaminants. These measures include requirements for the storage and handling of gasoline at the wholesale and retail levels, reductions in the volatility of gasoline, controlling the release of vapors from degreasing manufactured parts, surface coating of

wood and metal parts, asphalt and coal tar pitches used in roof coatings, printing inks and dry cleaning. In addition, the Department has operated one of the most successful vehicle inspection programs in the country since the mid-1970s. More recently the Department adopted a variety of rules targeting sources of volatile organic compounds including the use of automobiles (parking ratios and employee commute options programs) and motor vehicle refinishing. Following a program of pollution control in a progressive manner that has restored and maintained air quality, keeping the air as free from pollution as is practicable, residents in the Portland area have experienced improvements in air quality even as the population has increased by over 55 percent since 1970.

Emission reductions from barge loading was targeted in the Portland ozone maintenance plan. Analysis of future Portland air quality accounting for the influence of growth and the phase-in of all the adopted control strategies indicated that these pollution savings would not be needed until 1999 when it was expected that the cross-Cascade pipeline would be operational. The pipeline would effectively address petroleum distribution needs and significantly reduce emissions in the Portland area.

4. O5, W8, W10

It is extremely important from a public health perspective to begin requiring capture equipment for gasoline and other fuel emissions. Any disadvantages or inconveniences suffered by fuel companies are vastly outweighed by the benefits to Portland residents.

The Department agrees with the commentor that vapor control for loading gasoline is needed to protect public health. Vapor control for loading other fuels is not as necessary for the reasons outlined in the response to comment 7.

5. W5

Final rule needs to reflect the goals that were established for its justification, i.e., to capture four hundred tons of VOC emissions to compensate for the loss of the cross-Cascade Pipeline.

The Department has assumed within the maintenance plan a reduction equivalent to about 90 percent of the uncontrolled emissions. In the 1992 base year this would have amounted to about 440 tons. In the meantime, terminals have come into operation that were not operating in 1992 and barge loading activity has increased at twice the rate that had been projected within the maintenance plan. The need to secure emission reductions from barge loading is further underscored by recent air quality monitoring. The data show the Portland area continuing to experience exceedances of the 1 hour standard (3 in 1996, 3 in 1998) and the new 8 hour ozone standard (4 in 1998).

The emission reduction standard proposed in the rule, 95 percent, reflects not the maintenance plan commitment but the standard for control among most of the jurisdictions that require marine vapor control. The requirement to include all of the terminals, including those with lower throughput, is based on a determination of what can be

reasonably expected based upon the analysis outlined in the Rulemaking Proposal Memorandum and in the response to comment 11.

THE PROPOSED RULE REQUIRES A 95 PERCENT REDUCTION IN EMISSIONS; A HIGHER LEVEL SHOULD BE REQUIRED

6. O1, O2, O4, O5, W8, W9, W11, W12, W14, W16, W17

San Francisco requires 98.5 percent controls. Santa Barbara requires Exxon to reduce emissions by 99.8 percent. Portland deserves the same level of protection. Oregon should require 99 percent reduction in VOCs, as has been achieved elsewhere on the west coast. The goal should be zero percent pollution. State of the art technology should be required at all facilities.

The Department disagrees. No supporting documentation was provided by the commenters. DEQ's research shows that the Bay Area Air Quality Management District requires emissions from loading into marine vessels to be reduced by at least 95 percent (8-44-301). The Santa Barbara County Air Pollution Control District requires an identical reduction (Rule 327-C-1).

Zero percent pollution production is not technologically feasible. While the rule requires 95 percent reduction from the uncontrolled condition, the equipment designed to meet this standard is typically constructed to perform at high levels, approaching 99 percent, to ensure an adequate margin of compliance for the regulated source. State of the art equipment will be installed to comply with this rule.

THE PROPOSED RULE ONLY REQUIRES CONTROL OF GASOLINE EMISSIONS; EMISSIONS FROM OTHER FUELS SHOULD ALSO BE CONTROLLED

7. O1, O2, O3, O4, W15

Emissions of other fuel vapors, such as jet fuel and diesel fuel should also be required. Once installed, the equipment should be used for the maximum benefit of the airshed.

Gasoline is at least three times more volatile than any of the other petroleum products typically shipped in the Portland area such as diesel fuel, heating oil, ethanol and jet fuel. The Portland area is a rather "simple" petroleum market as compared to other jurisdictions where marine vapor control is required. The bulk of the product loaded onto river barges is gasoline, based on the latest reports made to the Army Corps of Engineers in 1997. Considering these two factors, gasoline loading accounts for about 99 percent of all the volatile organic compound emissions from loading barges. The rule proposes vapor control when gasoline is loaded or when gasoline was the previous load. This latter

condition ensures that the vapors from the previous gasoline load are captured and controlled even if another less volatile product is being loaded.

8. O3, W14

Benzene is a concern and is present in gasoline, jet fuel, diesel fuel and heating oil. DEQ should be concerned about the tons of benzene released from the tank farms. Benzene is toxic and was found to be 113 times one benchmark in a nationwide EPA study. DEQ should take every opportunity to reduce emissions of hazardous air pollutants.

The Department agrees that benzene, along with other toxic air contaminants are a concern. With marine vapor controls in place, as proposed in this rule, toxic emissions associated with gasoline vapor from barge loading will be reduced by 99 percent.

THE PROPOSED RULE APPLIES ONLY IN THE PORTLAND AIR QUALITY MANAGEMENT AREA; IT SHOULD APPLY STATE-WIDE

9. O1, O2, O4, W9, W14, W15

There are oil terminals in other parts of the state that should also be controlled, such as the McCall dock and in Umatilla. Cascade Grain in Clatskanie is exempted from the rule, but it should not be as emissions could be transported into the Portland area. Oil companies should not have the opportunity to simply move outside the Portland metropolitan area to avoid compliance. The rule should apply statewide.

The rule does apply to the McCall Oil facility in Portland if they load gasoline onto river barges.

The Tidewater facility in Umatilla is located within an area that meets the ozone standard and used solely for storing diesel oil and other products like liquid fertilizer. The Department has investigated operations at this site periodically and found them within compliance of state air quality rules.

The Department is aware of the proposed Cascade Grain facility in Clatskanie and is currently meeting with the owners and operators of the facility in pre-permit meetings. The need for appropriate air pollution controls for this facility will be determined in the next several months. One commentor had suggested that federal rules require sources within 24 hours of "wind travel" time of an ozone maintenance area to be considered to be in an ozone transport zone. The Department has found no evidence of such a rule. Oregon and federal rules call for additional air quality requirements for sources within 30 kilometers of an ozone nonattainment area. The Clatskanie facility is beyond this impact zone and, unless air quality modeling shows otherwise, would have no measurable effect on the Portland ozone area.

The Department is sensitive to the limitations of a geographically constrained rule that may contribute to a business' decision to locate outside the defined area to avoid the regulation. The probability that the existing terminals in Portland will shut down and move their operations is not high. The oil companies have made a substantial investment in their existing facilities, which benefit tremendously from their location on the Olympic Pipeline that supplies gasoline inexpensively to the terminals.

CONCERNS ABOUT SEASONAL APPLICABILITY

10. O4, O5, W6, W8, W9, W10, W11, W12, W15, W16, W17

The proposed rule should not allow a seasonal exemption; it should apply year-round. Exposure to toxic air contaminants like benzene is a problem year round. Year round operation will add only marginally to overall costs as operational costs are much less than capital costs.

The Department agrees. The proposed rule did not allow for seasonal applicability. See response to comment 11.

11. W5

Smaller terminals, facing much higher control costs, should be allowed to control ozone emissions only during ozone season when the threat is greatest.

While the conditions that result in unhealthy ozone levels typically occur in the summer months the cost savings that come from operating the control device on a seasonal basis are not as great as one could expect. Most of the costs associated with vapor recovery controls reflect capital expenditures and not operating expenses. Any savings based on seasonal operations would come only from reduced operating expenses. Most of the operating expenses would be incurred in the summer months when most of the annual loading of gasoline occurs. As a result, the smaller terminals could expect to reduce their annual costs by no more than 14 percent through a seasonal shutdown. In this scenario, expending the 14 percent of the costs associated with year round operation allows pollution to be controlled from 45 percent of the throughput, markedly improving the overall cost effectiveness of this approach.

Fundamentally environmental protection is expected all the time, regardless of the temporal or seasonal sensitivity of the environment to endure impacts. In some cases, for reasons of financial impact or technical feasibility, environmental rules do allow for periodic control. Cost analysis of marine vapor recovery for the smaller terminals indicates that year round controls would reduce emissions at a cost of between $1,800 to $3,000 per ton of pollution reduced. A measure of how reasonable this financial cost is can be obtained by comparing these values to those established by EPA for Reasonably Available Control Technology or RACT. Under the provisions of the Clean Air Act, EPA establishes RACT on an industry-

by-industry basis that reflects an expectation of performance for pollution control equipment that takes into account technological and financial feasibility. In 1979 EPA published RACT for marine terminals at $2,000 per ton. In current dollars, adjusted for inflation, that standard would be at about $4,500 per ton. Year round pollution controls at the smaller Portland terminals fall within this RACT standard and are therefore justified.

Other programs aimed at reducing ozone pollution typically apply year round. These include, for instance, gasoline vapor controls at gas stations, the vehicle inspection program, industrial rules affecting degreasing parts and surface coating, the requirement for employers of more than 50 employees at a work site to reduce drive alone commuting, and reduced volatility of paint products.

EFFECTIVENESS OF PORTABLE DEVICE IS LIMITED BY LOGISTICS

12. W7

Sharing a control device appears reasonable but scheduling issues will make coordination very difficult.

The Department agrees. Scheduling issues may be challenging but should not be insurmountable. The opportunities to load simultaneously at more than one site will be limited by the availability of barges (four) capable of meeting the vapor control requirements. The probability that loading events requiring portable controls will occur at the same time is also influenced by the demand. Among all the smaller terminals that could use a portable device, including Mobil, Tosco, Shore Terminals, Time Oil, Cenex and Tesoro, the total annual loading time amounts to only 188 hours or 2 percent of the year. Between the limited availability of vessels to load and a relatively small number of hours per year that loading would likely occur a system to coordinate a portable control device should develop.

EMISSIONS DURING LIGHTERING SHOULD ALSO BE CONTROLLED

13. O1, O2, O5

Lightering is only restricted on Clean Air Action Days. There should be a 100 percent prohibition of lightering. Lightering controls may be expensive, but that is "tough luck" for the oil companies. Emissions from lightering were not quantified in the staff report.

The Department disagrees. The proposed rule requires vapor control when lightering occurs at the terminal dock. Typically most of the gasoline lightered occurs at these locations rather than at midstream anchorages. Providing vapor control at midstream anchorages is, at this time, impracticable because it requires a barge to be removed from service so that a vapor recovery control system could be installed on board. The cost of installing and operating this device would be higher than for a similar land-based system

due to a number of factors, including revenue lost with removing the barge from more lucrative transport service, the need to supply auxiliary power, tugboat transfer to lightering locations, storage of the barge when not in use and compliance with applicable Coast Guard regulations.

The report accompanying the notice of rulemaking did note that emissions from lightering activities typically release about 8.5 tons of volatile organic compounds annually, based on data from 1998.

14. O4

Rule has been weakened by the oil companies; lightering is uncontrolled. Will DEQ monitor lightering?

The Department revised the elements of the rule related to lightering based on research to determine the technical and practical feasibility of requiring these controls. The change was not made at the request of any of the oil companies or any other party involved. Otherwise, see response to comment 16.

15. O5, W6, W8, W11, W12, W15, W16, W17

Lightering must not become a method to avoid compliance. This rule should add language to monitor lightering activities and ensure that lightering does not become a substitute for compliance with these new rules.

The Department recognizes that midstream lightering, while impracticable to control under current conditions, may increase in frequency to avoid costs associated with complying with the regulation. The Department recommends changes to the Recordkeeping/Reporting section of the rule to require vessel owner/operators to report the extent of lightering regardless of location in the area.

16. O4, W6

Requirements should extend even to those vessels making first time visits to the area. How will DEQ enforce this requirement?

The Department recognizes that with limited staff available to review records of marine vessel visits to Portland area terminals that enforcement of this provision may prove difficult. Therefore the Department recommends that this exemption be deleted from the proposed rule.

CONCERNS ABOUT NEEDING OR ALLOWING AN EMISSION OR THROUGHPUT EXEMPTION

17. W5

Small terminals face disproportionately higher costs for control. A terminal loading very few barges in a year will face substantially escalated costs of abatement. Exemptions exist in Oregon for other gasoline categories of VOC that are small emitters. A similar exemption based on throughput or emissions should be considered here.

Exemptions in other VOC control programs like Stage I and Stage II vapor recovery were established because the costs per facility approached 2-3% of the capital costs of constructing a new station. In both of these rulemakings the Department relied upon a test of reasonableness tied to the cost per ton of pollution reduced. As noted in comment 11 the requirement for marine vapor control for all terminals in the Portland area meets a test of reasonableness based upon a comparison to EPA's inflation adjusted cost of control for marine terminals.

18. O5, W8, W11, W12, W16, W17

A de minimis exception is bad policy and bad for the air. Deal with the emissions on an equitable basis. There can be no complaint of financial impact, given that every other major west coast port requires controls.

The Department agrees. The proposed rule did not contain a de minimis exemption. However, not all west coast ports require marine vapor control, e.g., Seattle, Tacoma and San Diego. For those ports that do require vapor control the terminals tend to be much larger than in Portland. As noted elsewhere, the financial impact to smaller operations can be greater than for larger terminals. Nonetheless, in the Department's analysis of costs associated with marine vapor controls we have determined that it is reasonable to require vapor control at even the smallest terminals in Portland.

COMMENTS ON THE FISCAL IMPACT

19. W2, W15, W16

Supports adoption of the rule, even if it adds one or two cents per gallon to the price of gasoline. The market will absorb any minimum additional costs. People will continue to drive their cars with higher fuel costs and one or two cents will not make much difference.

The Department appreciates the comment in support of the rule. The fiscal estimate was for costs of control expressed as a price per gallon. This does not necessarily mean that this cost would be directly reflected at retail. For instance, the typical cost per gallon east of the Cascades is often lower than retail prices in the Willamette Valley even though transportation costs are higher east of the Cascades. The fiscal statement also assumed that

all costs would be assigned to product transported by barge. If, instead, costs were distributed among all the product handled by the Portland terminals the impact at retail would be less than a quarter of that estimated.

20. O5, W8, W17

Based on experience in Washington and California, proposed rule would not increase the cost of gasoline.

Marine vapor control is not required in Washington state. No evidence was provided nor is the Department aware of any studies regarding the assignment of costs associated with marine vapor control rules and the impact on retail prices. Oregon drivers, for instance, may already be paying some of these costs as some of the gasoline sold in the state arrives by tankships loaded in the San Francisco Bay area where marine vapor control requirements have been fully operational since 1992.

CONCERNS ABOUT THE COMPLIANCE SCHEDULE

21. O3, O4, O5, W8, W9, W10, W12, W14, W15, W16, W17

Concerned that the rule will not be effective until 2001. Control equipment has been available for at least 12 years. The control equipment is available now, why wait until 2001 if it can be done sooner? The rule should become effective in August 2000. Southern California, northern California, Washington state and elsewhere implemented these regulations over ten years ago. The industries have been on notice for many months that proposed rules were under consideration. The essential infrastructure can be constructed and rendered operational with 40 to 50 weeks. The time schedule for implementation should be compressed.

The compliance timeline was established to provide the earliest protection possible to the most vulnerable season. The estimate accounts for the time needed to engineer, build, install and test control equipment that is safe and reliable. These devices are not off-the-shelf items and must be built to reflect the conditions specific to each location. Despite the comment that these devices have been around for a long time, the controls have only been in widespread use since the early to mid 1990s.

In addition, each of these companies must secure approvals from other permitting authorities like the city of Portland for building and greenway construction permits. If modifications to the terminal dock are required then review by the Division of State Lands and the Army Corps of Engineers is needed to control the impact to the state's waters and any threatened species in the area. Construction and engineering will be delayed during permit review. The timeline proposed accommodates estimates from each of these agencies

and manufacturers of the control equipment and provides little additional time. It would be a very difficult to meet a tighter schedule.

The commentors refer to the experience from other states in establishing compliance timelines. Washington state currently does not require marine vapor control at any location in the state. In California terminals were allowed anywhere from 2 years to 3.5 years to comply with the regulation. Compared to the schedules proposed by any other jurisdiction around the country, Oregon's timeline is the second shortest, so clearly it is not a lax schedule.

22. O5, W8, W17

The permitting process with governmental authorities can be expedited by cooperation and taking advantage of concurrent processing of permits.

The Department is prepared to provide whatever resources it can to facilitate and expedite permit review by other agencies. The proposed schedule assumes concurrent processing of permits.

23. W4

The proposed compliance schedule is accurate and aggressive. Barge loading controls will require a unique system here. The controls are a complex unit that must reliably meet safety and regulatory requirements.

The Department agrees with this comment and feels that the schedule balances the need to achieve these pollution reductions as soon as possible and the needs to build safe and reliable equipment.

24. W6

Many previous regulations have incorporated a phased in schedule based on facility throughput. This allows the lower throughout facilities to prepare financially to upgrade their facilities. DEQ should implement a three-tiered schedule with high emitters coming into compliance according to the proposed schedule; low emitting west side terminals should be allowed additional two years; low emitting east side terminal allowed additional three years.

Phased in compliance schedules in the past have reflected the need to construct a multitude of control devices in order to comply with the rule. The pool of sources affected by this rule is much smaller, seven. The Department began discussions with terminals and interested members of the public in June 1999 regarding the Department's intention to control emissions from barge loading. Early stages of financial planning could have been commenced at that time. The Department is not aware of any evidence to indicate that more time is needed for financial planning.

25. W7

The proposed schedule allows only 2 weeks of flexibility to deal with any disruptions in approval or construction, based on estimates for permit review and engineering and construction. DEQ should extend the compliance deadline four to six months or extend compliance deadline, by month, subject to completion of the permit review process by the city of Portland and DSL/Corps.

As noted elsewhere, the Department recognizes that this is an aggressive schedule but is based upon estimates from vendors and permitting agencies and therefore DEQ considers it realistic as well.

THE PROPOSED RULE ALLOWS A CHOICE OF CONTROL TECHNOLOGIES, VAPOR RECOVERY SHOULD BE THE PREFERRED CONTROL TECHNOLOGY

26. O4, O5, W8, W11, W12, W16, W17

Carbon adsorption allows the oil companies to recover product and recycle it; they should not burn it. Encourage carbon adsorption, not burning; oil companies will save money by recovering product. The cost of the recovered product should be reflected in the cost analysis.

Ultimately the decision to install a particular device is up to the regulated entity. While a recovery/reuse system is attractive as a way to reuse product that would otherwise have been lost as vapor, there are known technical and environmental limitations to this process. The expected recovery rate from marine loading is less than 1 gallon per thousand gallons loaded. The recovery efficiency and the quality of the product recovered also declines rapidly if products other than gasoline are recovered. The carbon in the unit ultimately must be disposed and must be treated as hazardous waste.

The value of the recovered product was incorporated into the financial analysis that was reported in the public notice. Even with the value of the recovered product included, in most cases carbon adsorption proves to be a more costly recovery technology than combustion.

CONTINUOUS EMISSION MONITORS SHOULD BE REQUIRED

27. O1, O2, O4

Commentor is skeptical of oil companies' veracity in reporting their own fuel throughput, control efficiency and the resulting emissions. Continuous emission monitors should be required to verify the control efficiencies. Emissions are going to be higher in the summer months and reliance on a single emission factor will not be sufficient to reflect the

variability in emissions related to ambient temperature. The monitors will provide real time measurement of these emissions.

No provision is needed in this rule to require continuous emission monitoring as the requirement is covered under other rules. Compliance assurance monitoring requirements are outlined in OAR 340-212-0200 for Title V sources and for other stationary sources in OAR 340-212-0120.

Each of the terminals' control devices will be required to have a source test to determine if its control efficiency meets the required 95%. The Department will review the accuracy of each source test. Source tests are preformed under normal operating conditions (for example the rate of fuel being loaded, the operating temperature of the thermal oxidizer, etc.) and operating parameters are established in the permit to ensure the source consistently stays within those parameters which will meet the control efficiency of the rule (for example setting the thermal oxidizer temperature at 1500 +/- 25degs and requiring continuous monitoring of the thermal oxidizer temperature.) Carbon adsorption units will rely on a different technology, e.g., organic vapor analyzers, to determine compliance assurance.

All sources subject to this rule will be required to install continuous process monitors appropriate to the control device selected to ensure that the equipment is operating properly and the expected environmental protection is secured.

THE PROPOSED RULE ALLOWS TOO MUCH LEAKAGE FROM HATCHES

28. O1, O2

The proposed rule allows up to 10,000-ppm leakage from hatches and other seals. This standard would allow leaks of up to 10 percent. The Bay Area Air Quality Management District considers 100 ppm the appropriate emissions ceiling for process valves and pumps. DEQ should require less leakage.

The proposed rule amendment 340-232-0030 (78) defines vapor tight as a "condition that exists when the concentration of a volatile organic compound...does not exceed 10,000 ppm (expressed as methane)." This is not a 10 percent leakage allowance. The reference concentration is consistent with the Bay Area Air Quality Management District rules for marine terminals (Rule 8-44-209) which defines "Gas Tight [as]: A condition that exists when the concentration of precursor organic compounds, measured 1 centimeter from any source, does not exceed 10,000 ppm (expressed as methane) above background." This reference compound concentration is also consistent with the definition of leak specified in 40 CFR 63.541 for Marine Tank Vessel Loading Operations (10,000 ppmv, as methane).

PERMIT MODIFICATIONS MUST BE UNDERTAKEN PROMPTLY

29. O5, W8, W12, W16, W17

The permittees should be advised upon implementation of these proposed rules that permit modifications will be initiated by the Department, and permit modifications should be finalized on a timely basis. Lacking a binding requirement in federal law or the Oregon State Implementation Plan, the rulemaking should be amended to include a schedule for permit modifications.

The provisions of the rule become applicable even without modifying the permit. The Department intends to initiate modifications to the terminal's permits in a timely manner. Even if this were not the case, failure to comply with the rule by one or more of the terminals would subject that terminal to an enforcement action by the Department for violation of the rule.

CLARIFY THE APPLICABILITY OF SELECT PROVISIONS IN THE RULE

30. W1,W3

340-232-0110 (7) addresses uncontrolled lightering events but refers to "uncontrolled barge loading". For consistency, all references to uncontrolled barge loading in this section should be revised to refer to uncontrolled lightering events.

The Department agrees with this comment and the clarification will be incorporated into the final rule.

31. W13

340-232-0110 (1) places the sole responsibility for compliance with the rule upon the terminal owners or operators. This places an unrealistic burden on terminals forcing responsible operators to conduct operation and maintenance reviews of each vessel to ensure each vessel meets requirements. Recommends that both the vessel and terminal operator be responsible for compliance for the vessels and facilities within their control.

The Department agrees with this comment and the change will be incorporated into the final rule.

32. W13

340-232-0110 (6) (a) requires only marine terminal operators to maintain records of loading events at terminals. Marine vessel operators should also be required to keep records of loading events at terminals.

The Department agrees with this comment and the change will be incorporated into the final rule. As noted in the response to comment 16 the Department will recommend that vessel owner/operators maintain records of all loading events, not just those at terminal docks.

33. W13

"Liquid leak" is not defined. Suggest adopting dripping liquids definition from federal register 40 CFR 60.481.

The Department reviewed several definitions for the term "leak" or "liquid leak," including the definition of "dripping liquids." The term "dripping liquids," as it is defined in 40CFR60.481, Standards of Performance For Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, means "any visible leakage from the seal including spraying, misting, clouding, and ice formation." The proposed rule requires the regulated vessel to be leak free and vapor tight. The definition of dripping liquids, as used to describe a leak, may be in conflict with "vapor tight" that is measured in parts per million using an approved test method; generally Method 21. The term "leak", read in the context of its plain meaning, includes releases that can be detected by visual or olfactory observations, but is compatible with the definition of vapor tight.

34. W13

Commentor suggests adding exemption from control requirements when both the following conditions are met: 1) The vessel has been gas freed (regardless of prior cargo), and 2) When loading any products other than gasoline. Recordkeeping requirements in 340-232-0110 (6) (a) (E) should be amended to identify prior cargoes as gas freed when it has occurred. Gas freed should also be clearly defined as, for instance, when the concentration of VOC in the cargo bay has been measured with an OVA at a level less than 10,000 ppm expressed as methane.

The Department agrees. A vessel that has been gas freed does not retain the vapors of the prior load. Under these conditions the loading of products other than gasoline will not contribute to a significant release of volatile organic compounds. The Department agrees with this point and to modify the recordkeeping requirements to identify a gas freed cargo hold among the prior conditions of the vessel. The Department recommends that the change be incorporated into the final rule.

"Gas freed" is a term commonly used within the maritime industry that is reflective of long standing requirements from the U.S. Coast Guard, federal Occupational Safety and Health Administration and embodied in National Fire Protection Association Rule 306. The commentor's proposed definition of gas freed does not necessarily reflect current understanding of what is meant by gas freed. The Department proposes instead to recommend that gas freed in this rule will reflect the condition as certified by a marine chemist outlined under the procedures identified in Rule 306 of the National Fire Protection Association.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Marine Loading Vapor Control

Detailed Changes to the Original Rulemaking Proposal Made in Response to Public Comment

340-232-0030
Definitions

(28) "Gas Freed" means a marine vessel's cargo tank has been certified by a Marine Chemist as "Safe for Workers" according to the requirements outlined in the National Fire Protection Association Rule 306.

(44) "Marine Tank Vessel" means any marine vessel constructed or converted to carry liquid bulk cargo that transports gasoline ~~from or within the Portland ozone air quality maintenance area more than once a year~~.

340-232-0110
Loading Gasoline onto Marine Tank Vessels

(1) Applicability. ~~The purpose of this rule is to regulate the emissions of volatile organic compounds (VOC) while loading fuel products into marine tank vessels in the Portland ozone air quality maintenance area. Terminal owners or operators are responsible for compliance with these rules for all vessels loaded at their docks~~ This rule applies to operations to loading events at any location within the Portland ozone air quality maintenance area when gasoline is placed into a marine tank vessel cargo tank; or when any liquid is placed into a marine tank vessel cargo tank that had previously held gasoline. The owner or operator of each marine terminal and marine tank vessel is responsible for and must comply with this rule.

(2) The following activities are exempt from the marine ~~terminal~~ vapor control emission limits of this rule:

(a) Marine vessel bunkering;

(b) Lightering when neither vessel is berthed at a marine terminal dock,

(c) Loading when both of the following conditions are met:

(A) The vessel has been gas freed (regardless of the prior cargo), and

(B) When loading any products other than gasoline.

(4) Marine Vapor Control Emission Limits. Vapors that are displaced and collected during marine tank vessel loading events must be reduced from the uncontrolled condition by at least 95 percent by weight, as determined by EPA Method 25 or other methods approved in writing by the Department or limited to 5.7 grams per cubic meter (2 lbs. per 1000 bbls) of liquid loaded.

(6) Monitoring and Record-Keeping.

(a) Marine terminal operators must maintain operating records for at least five years of each loading event at their terminal. Marine tank vessel owners and operators are responsible for maintaining operating records for at least five years for ~~lightering operations occurring away from a terminal~~all loading events involving each of their vessels. Records must be made available to DEQ upon request. These records must include but are not limited to:

(A) The location of each loading event.

(B) The date of arrival and departure of the vessel.

(C) The name, registry and legal owner of each marine tank vessel participating in the loading event.

(D) The type and amount of fuel product loaded into the marine tank vessel.

(E) The prior cargo carried by the marine tank vessel. If the marine tank vessel has been gas freed, then the prior cargo can be recorded as gas freed.

(F) The description of any gaseous or liquid leak, date and time of leak detection, leak repair action taken and screening level after completion of the leak repair.

(7) ~~Uncontrolled l~~Lightering ~~events~~exempted by subsection 2(b) of this rule must be curtailed from 2:00 AM until 2:00 PM when the Department declares a Clean Air Action (CAA) day. If the Department declares a second CAA day before 2:00 PM of the first curtailment period, then such uncontrolled ~~barge loading~~lightering must be curtailed for an additional 24 hours until 2:00 PM on the second day. If a third CAA day in a row is declared, then uncontrolled ~~barge loading~~lightering is permissible for a 12 hour period starting at 2 PM on the second CAA day and ending at 2 AM on the third CAA day. Uncontrolled ~~barge loading~~lightering must be curtailed from 2 AM until 2 PM on the third CAA day. ~~The curtailment and loading pattern will repeat if CAA days continue beyond a third day~~ If the Department continues to declare CAA days consecutively after the third day, the curtailment and loading pattern used for the third CAA day will apply.

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Marine Vapor Recovery

Rule Implementation Plan

Summary of the Proposed Rule

The proposal presented on public notice proposed that all bulk gasoline terminals operating in the Portland area would reduce the emissions of gasoline vapors when loading marine vessels by at least 95 percent, including lightering, the ship-to-ship transfer of cargo, when either vessel is berthed at their dock. Lightering that occurred at other locations would be prohibited on Clean Air Action days.

Proposed Effective Date of the Rule

June 1, 2001

Proposal for Notification of Affected Persons

Responsible parties identified in the permits for bulk gas facilities in the Portland area will be notified of the adoption of marine vapor requirements. They will also be advised of the process for modification of their permits that will be initiated by the Department to ensure that the permits conform to the requirements. Regardless of when the permits are actually modified, sources will still be expected to meet the requirements of the rule upon the effective date.

Proposed Implementing Actions

All of the affected sources are in DEQ's Northwest Region. Two permit inspectors are responsible for the terminals, an NRS4 and an EE3. Over the next year, the inspectors will work with the sources to ensure that the sources are on schedule to comply with the requirements. Five of the sources have Title V permits. The rest have air contaminant discharge permits. Sources must comply with the rule requirements regardless of when the permits are modified or renewed. However, NWR intends to modify or renew all of the terminal permits by the June 1, 2001, compliance date. The inspectors will coordinate permit issuance with the City of Portland and the Department of State Lands.

Sources will be inspected periodically to determine the status of their compliance.

Proposed Training/Assistance Actions

For Department staff the rule does not represent any qualitative change from the permitting and compliance assurance activities that now occur in regard to these facilities. No additional training needs are anticipated.

The Department will provide support and assistance to facilitate review of permits required from other agencies so that the effort by the affected sources can move expeditiously to meet the June 2001 compliance deadline.