Heating oil tank revisions 2000

DEQ 3-2000

340-163-0005 340-163-0010 340-163-0020 340-163-0025 340-163-0030 340-163-0035 340-163-0050 340-163-0060 340-163-0070 340-163-0110 340-163-0150

**Environmental Quality Commission**

Rule Adoption Item

D Action Item

D Information Item **Agenda Item G**

**February 11, 2000 EQC Meeting**

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| **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. |
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| Report AuthoLaurie **J.** McCulloch Mary Wahl |  |

# 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 !mown 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 en-ors 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 ce1iify 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 aud 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.