**OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

**TESTIMONY BEFORE THE ENVIRONMENTAL QUALITY COMMISSION**

**November 15, 2019 – Agenda Item L – Heating Oil Tank Rule Modification**

Good morning, I am Lydia Emer, Administrator of the Land Quality Division. With me is Jessika Cohen the rule writer who coordinated the advisory committee and public notice process for this rulemaking. Mike Kortenhof, manager of the heating oil tank program is also on the phone. We are here to recommend a rule modification to implement Senate Bill 40. It was passed by the Legislature in June raising fees for our work on heating oil tank leaks. We’ll provide a brief overview of the environmental problem, information about the DEQ work, and a summary of the fee and rule changes.

SLIDE 2 – tank pictures and graphic

Heating oil tanks, or “HOTs” for short, are used to store fuel for furnaces in homes, apartments and commercial buildings. The vast majority are associated with single family residences. Most of these tanks were installed in the 1960’s and earlier and were buried underground. The tanks are made of bare steel, which corrodes over time and lead to the contents leaking into the environment. The greatest potential health hazard from a leaking HOT is from petroleum vapors that can migrate up into the building as shown in this basic graphic.

SLIDE 3 – line graph 1987-2027

In 1988 the EQC approved rules requiring all underground storage tank owners report leaks to DEQ and to clean up the contamination. Awareness and reporting increased dramatically in the 1990’s leading the Legislature to create a distinct HOT program because there are so many residential tanks. Most heating oil tanks have been abandoned in place and are usually discovered during property transactions, to the surprise of many property owners. Since 2000 there has been a slow decline in tank discovery with a notable drop during the real estate market collapse starting in 2008.

Next Mike will explain how the DEQ program work, then Jess will summarize the rule revision process.

For the record, I’m Mike Kortenhof manager of the DEQ HOT program. Our program uses a third party certification process to provide rapid cleanup oversight and cleanup approval. Contractors must hold a DEQ Service Provider license, including errors and omissions insurance, and certify that their work meets Oregon rules. DEQ’s role is to insure work is performed adequately by updating standards and guidance, licensing service providers, registering certifications received, maintaining project records and auditing project work.

SLIDE 4 – project pie charts

In 2018 the DEQ HOT program received 1,930 project certifications. Through 2018 just over 50,000 property owners have identified and reported a HOT to DEQ; we estimate that 200,000 were originally installed underground. Heating oil tanks are usually found at older homes dating before 1960; 86% are in the Portland tri-county area. Leaks were discovered at 66% of the tanks reported to DEQ. It usually costs property owner between 2000 and 6000 dollars for a contractor to do this work, and sometimes much more. We have done a lot of work but there still is a long way to go. The HOT program is designed to operate at 4.3 full time equivalent positions but the current fees only allow us to operate at 3.2 FTE. At that level we are not able to provide useful guidance or check enough reports for quality. Mistakes are being made and missed and homeowners suspect they are paying for extra work.

There is one technical element of the existing rules that I want to highlight because it is central to today’s action. It is the criteria used for further action when there is a leak. There are three cleanup options defined in existing rule, described on this slide

SLIDE 5 – rule definitions

The first is called “soil matrix” were all soil contaminated above a conservative threshold is removed. The second is called “generic remedy” where higher concentrations of contamination are allowed to remain in place if the total volume is small. The third is called “risk based” where more testing and evaluation of larger problems are performed to rule out an actual risk. The three options allow progressively larger amounts of contamination to remain in place in lieu of more expensive treatment or removal. They are also progressively more complicated to perform and review. Today’s proposal is to formally associate these existing rule options with the new statutory fee categories – simple, intermediate and complex. In 2018 46% of the cleanup projects were risk based cleanups, 22% were generic remedy, 32% were soil matrix.

SLIDE 6 - current fees

The fees charged for these licenses and project registrations are set by the Legislature in statute. Since 2007 property owners paid DEQ $75 to register a project with no leak, a “clean decommissioning”, and $200 for all types of cleanups. The 48 companies currently licensed to perform this work also pay an annual license fee of $750 and $75 for each individual site supervisor, as originally established in 1999. The program is 100% fee funded, using no general or Federal funds. Next Jess will summarize the statutory changes and our proposal,

SLIDE 7 – SB 40

For the record, I am Jessika Cohen, policy coordinator that handled the rule writing process. At our request, the Governor proposed Senate Bill 40 asking the 2019 Legislature to increase the fees to restore DEQ staffing. The fee amounts were developed through discussions with homeowners, service providers and realtors about necessary program operations and funding splits. This included a workgroup, homeowner surveys and a realtor webinar during the legislative preparations. Comments we received had two themes: 1) provide more technical assistance and guidance and 2) link fees to DEQ workload for different situations. Because of the heavy public participation through the legislative process the final public comments taken for this rule action only received two responses as reflected in the staff report. Senate Bill 40 was approved in June. It raises the fees to restore our activity and requires the EQC to define simple, intermediate and complex corrective actions by rule, effective this coming January 1st.

SLIDE 8 - project fee summary

Fees for the simplest projects where no leak occurred go from $75 per project to $100. Because current DEQ rule was not updated in 2007 it still shows the superseded fee amounts from the start of the program. The Legislature approved three tiers for cleanup report filing fees, linking the largest fee increases to the most complex, time-consuming projects. Instead of $200 per cleanup project, the proposed new fees are $250, $350 or $450 for simple, intermediate and complex projects. The key element of this EQC action is to connect the new statutory categories with the existing rule options described earlier. In this rule action we propose categorizing the basic soil matrix option as simple, the generic remedy option as intermediate and the risk based option as complex. This link was not made in statute so that the EQC was free to change the project options in future rulemaking without needing legislative action.

SLIDE 9 - license fees Service Providers

Increases to license fees are phased in to minimize impacts on these small businesses. The Service Provider license fee paid by each company goes from $750 per year currently to $800 in 2020, then $900 in 2021 then $1000 in 2022 and later.

SLIDE 10 – license fees Supervisors

The annual license fee paid for site supervisors increases from $75 to $100. Because testing and renewals are done every two years the DEQ rules show the fee as $200 for a 24 month license.

This EQC action would document all these fee amounts in DEQ rule. The project registration fees provide 92% of DEQ HOT program revenue with the remainder is from license fees. These fees allow DEQ to provide the technical assistance and service provider inspections needed to guide effective and efficient project work. They are expected to be sufficient to fund DEQ for six years so we plan to be back before the legislature and you again in 2025. Without this additional revenue DEQ activities would continue declining creating more uncertainty and risk for service providers and homeowners.

SLIDE 11 - recommendation

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules Divisions 163 and 177.

Thank you for listening. We are happy to answer questions you may have.

Possible questions:

What are we doing about addressing tank leaks more quickly?

*Many homeowners prefer to address tank issues upon sale of the property when equity is available for the expense so DEQ outreach has focused on realtors. We would like to accelerate tank discovery and with our staffing reset we plan to add outreach to homeowners associations. We are especially concerned about oil heated homes unknowingly using failed tanks. We’d like to explore partnerships with energy efficiency and energy assistance organizations. Direct financial incentives, like loans or grants for decommissioning, would significantly expedite this work although funding for incentives would be difficult.*

How much time does DEQ spend on the different type of projects? Does DEQ labor match these fee categories?

*To date DEQ has prioritized risk-based projects for DEQ significant review so we don’t have project specific workload data. When reviewing specific reports we do expect complex projects to take about an hour longer than simple ones, which is proportionate to the new categories. As we reset our operations we expect to add field audits to our activities which will benefit all types of projects, and because complex projects have more elements to audit our time is still expected to be proportionate to complexity.*

What is the fiscal impact of this fee increase?

*The fiscal analysis is on page 13 of the staff report, which draws heavily on the fiscal work done for the legislative approval. The 48 small businesses paying the license fee are most impacted which is why that license fee is phased in. The DEQ project fees are a small portion of the total project costs so the increase is considered to have a minimal impact.*