

CHAPTER 321 WASTE MOTOR OIL DISPOSAL SITE REMEDIATION PROGRAM

Summary: This rule establishes certain procedures and standards applicable to payment of response costs incurred by eligible responsible parties at waste motor oil disposal sites in Plymouth, Casco, Ellsworth, and Presque Isle, Maine with proceeds of revenue obligation securities to be issued by the Finance Authority of Maine (the "Authority").

1. Definitions.

A. Reference to Act definitions. Certain terms used in this rule which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. Section 961 and following (the "Act"), shall have the meaning set forth in the Act unless clearly specified otherwise or unless the context clearly indicates otherwise.

B. Defined Terms.

1. "Chief Executive Officer" means the Authority's Chief Executive Officer or a person acting under the supervisory control of the Chief Executive Officer.
2. "Program" means the Waste Motor Oil Disposal Site Remediation Program, pursuant to which the Authority, as authorized by the Act, may from time to time issue revenue obligation securities, a portion of the proceeds of which are used to pay the response costs of eligible persons with respect to waste motor oil disposal sites.
3. "DEP" means the Maine Department of Environmental Protection.
4. "EPA" means the United States Environmental Protection Agency.
5. "PRP" means potentially responsible party.
6. "State" means the State of Maine.

2. Program Implementation.

The program shall be administered by and is delegated to, the Chief Executive Officer. All determinations to be made by the Chief Executive Officer hereunder may be made on the basis of such consultation with such advisors and taking into account such other factors as the Chief Executive Officer deems appropriate, in his or her sole discretion.

3. Waste Motor Oil Revenue Fund.

The Waste Motor Oil Revenue Fund, as established in 10 M.R.S.A. Section 1020(2), shall be deposited with and administered by the Authority. Any reasonable costs of administering the fund incurred by the Authority, including but not limited to costs of public notices required by the Program, costs of preparing for the issuance of, issuing and administering

revenue obligation securities issued for Program purposes, amounts necessary to fund a capital reserve fund or other reserve funds determined by the Chief Executive Officer to be necessary or desirable to secure payment of debt service on the revenue obligation securities and fees required to be paid to the Authority pursuant to Chapter 202 of the Rules of the Authority (Revenue Obligation Securities Program), may be taken by the Authority from monies in the fund or from sale proceeds of such revenue obligation securities or investment earnings upon such sale proceeds, in the Chief Executive Officer's sole discretion.

4. Eligibility.

- A. To be eligible for financial assistance under the Program, recipients must be persons that contributed waste motor oil to a waste motor oil disposal site and have been designated by the DEP or the EPA as responsible parties with respect to the waste motor oil disposal site and be one of the following:
1. Responsible parties that the DEP or EPA determines are insolvent, unlocated or defunct;
 2. Responsible parties that the DEP or EPA determines have a limited ability to pay;
 3. Responsible parties that the DEP or EPA determines are responsible for 110 gallons or less of waste motor oil at a waste motor oil disposal site;
 4. The State and any agencies, authorities, departments, boards, commissions or instrumentalities of the State or political subdivisions of the State;
 5. All franchised new car and truck dealers licensed pursuant to 29-A M.R.S.A., chapter 9, subchapter 3 or the successors in interest of any such franchised new car or truck dealers. The Secretary of State shall certify to the Authority those responsible parties that were licensed pursuant to 29-A M.R.S.A., chapter 9, subchapter 3;
 6. All used car and truck dealers licensed in accordance with 29-A M.R.S.A., chapter 9, subchapter 3 or the successors in interest of any such used car and truck dealers. The Secretary of State shall certify to the Authority those responsible parties that were licensed pursuant to 29-A M.R.S.A., chapter 9, subchapter 3;
 7. A person or its successor in interest that performed repairs at repair facilities located in the State on motor vehicles that are owned by third parties; is identified by the PRP group at the waste oil disposal site as qualified under this subsection; and certifies to the Authority under oath and subject to the provisions of 17-A M.R.S.A. Section 451 that it is qualified under this subsection;
 8. Any person or its successor in interest that performed repairs on its own fleet of motor vehicles, is identified by the PRP group at the waste motor oil

disposal site as qualified under this subsection and certifies to the Authority under oath and subject to the provision of 17-A M.R.S.A. Section 451 that it is qualified under this subsection. The motor vehicles at all pertinent times must have been registered, garaged and serviced in the State; or

9. Any person or its successor in interest that performed repairs, at repair facilities located in the State, on special equipment or special mobile equipment, as defined in 29-A M.R.S.A. Section 101, subsections 69 and 70, is identified by the PRP group at the waste motor oil disposal site as qualified under this subsection and certifies to the Authority under oath and subject to the provision of 17-A M.R.S.A. Section 451 that it is qualified under this subsection.

B. The United States of America and its agencies, authorities, departments, boards, commission and instrumentalities are not eligible to have any share of any of their obligation for response costs covered by revenue obligation securities pursuant to the Program.

5. Certificate of Determination.

A. The DEP, the EPA or the PRP group, as applicable, shall inform the Chief Executive Officer of the final remedy selection and response costs for each waste motor oil site. The Chief Executive Officer shall be advised in writing of the issuance of the final remedy selection and that the remedy will be implemented pursuant to a consent decree or other final settlement order or agreement determining substantially final response costs for a waste motor oil disposal site.

B. After receipt of written notice of the issuance of the final remedy selection and that the remedy will be implemented pursuant to a consent decree or other final settlement order or agreement determining substantially final response costs for a site, the Chief Executive Officer shall determine the costs that represent the collective share of eligible persons at the site.

1. In determining the amount of response costs incurred by an eligible person prior to the effective date of a consent decree or other final settlement order or agreement, the Chief Executive Officer shall rely on a written certificate of costs from the PRP group, if any, at the site, supported by such evidence of payment as the Chief Executive Officer may require.

2. In determining the amount of response costs incurred by an eligible person prior to the effective date of a consent decree or other final settlement order or agreement if no PRP group exists at the site, the Chief Executive Officer shall rely on a written certificate of costs from each eligible person, supported by copies of invoices, receipts or other evidence of payment as the Chief Executive Officer may require.

3. Any written certificate of costs must be made under oath and subject to the provisions of 17-A M.R.S.A. Section 451. Each such certificate of costs

and any evidence of payment supporting such certificate must be in form and substance acceptable to the Chief Executive Officer.

4. In determining the amount of response costs to be incurred by an eligible person after the effective date of a consent decree or other final settlement order or agreement, the Chief Executive Officer shall rely on the final allocation of response costs as agreed on by the responsible parties and as reflected in the consent decree or other final settlement order or agreement in the form that such responsible parties have agreed to and, if applicable, committed to submit to a court having jurisdiction of the matter for approval, as evidenced in a manner acceptable to the Chief Executive Officer.
 - C. The Authority shall issue a certificate of determination setting forth, in each case as determined by the Chief Executive Officer: (i) the amount of response costs paid or to be paid by responsible parties with respect to the site; (ii) the maximum amount of eligible response costs with respect to the site to be paid from the proceeds of revenue obligation securities, which shall not exceed the collective response costs of eligible persons at the site; and (iii) the maximum amount of proceeds of revenue obligation securities to be paid to or on behalf of each of the responsible parties;
 - D. The Authority may not issue more than two certificates of determination for a given site. After an original certificate of determination, the Authority may issue up to one supplemental certificate of determination with respect to a site, which may provide for payment from the proceeds of additional revenue obligation securities of an amount equal to no more than 10% of the amount of response costs initially certified for the site in Section 5(C)(ii) hereof.
6. Revenue Obligation Securities.
- A. Upon compliance with the requirements of the Program and this Rule, the Authority shall issue revenue obligation securities pursuant to the Revenue Obligation Securities Program, 10 M.R.S.A. chapter 110, subchapter 3 and Chapter 202 of the Rules of the Authority, except as otherwise noted herein. Such revenue obligation securities may be issued on a taxable or tax-exempt basis as determined by the Chief Executive Officer.
 - B. The requirement of Chapter 202(2) of the Rules of the Authority pertaining to an application shall not be applicable to issuances of revenue obligation securities pursuant to this Program, except as described in Section 6(C) hereof. Either a PRP group or, if there is no PRP group, any eligible person acceptable to the Chief Executive Officer may be the applicant for purposes of 10 M.R.S.A. Section 1043 with respect to revenue obligation securities to which that section applies.

- C. The Authority may collect the fees otherwise required by Chapter 202 of the Rules of the Authority as described in Section 3 hereof.
- D. The Authority may not issue revenue obligation securities for Program purposes in a principal amount that is expected to require payment of debt service (along with such amounts described in Section 3 hereof or necessary in the Authority's sole discretion to initially fund any capital reserve fund established pursuant to 10 M.R.S.A. Section 1053, or other reserve fund) in any year in an aggregate amount that exceeds the amount that the Chief Executive Officer determines, upon consultation with such advisors as he or she may deem appropriate, can be paid on a timely basis from the revenues reasonably expected to be received pursuant to 10 M.R.S.A. Section 1020(6-A) and to be available for such purpose without requiring a draw upon any capital reserve fund, without regard to whether the amount of the revenue obligation securities which the Authority determines to issue will be sufficient to pay the total amount described in Section 5(C)(ii) hereof.
- E. If the amount of net proceeds of an issuance of revenue obligation securities pursuant to this Program, after payment of any other costs described in Section 6(D) hereof that the Chief Executive Officer determines are to be paid therefrom, will be insufficient, for whatever reason, to pay the total amount described in Section 5(C)(ii) hereof, the Authority shall first use such remaining net bond proceeds to pay the eligible costs, if any, to be incurred by responsible parties after the effective date of a consent decree or other final settlement agreement (and, within such class of eligible response costs, to pay such response costs on a pro-rata or on such other basis as the Chief Executive Officer may determine to be necessary to permit the issuance of such revenue obligation securities on a federally tax-exempt basis, if so determined pursuant to Section 6(A) hereof), and thereafter shall use any remaining bond proceeds to pay any remaining eligible response costs (and, within such class of eligible response costs, to pay such response costs on a pro-rata or on such other basis as the Chief Executive Officer may determine to be necessary to permit the issuance of such revenue obligation securities on a federally tax-exempt basis, if so determined pursuant to Section 6(A) hereof).
- F. Notwithstanding the foregoing, however, to the extent that any responsible party is eligible to receive proceeds of revenue obligation securities as reimbursement for expenses that party has paid through the Authority's Plymouth Waste Oil Loan Program set forth in 10 M.R.S.A. Section 1023-M, such obligations to the Authority shall be paid as a first application of net proceeds of any revenue securities obligations issued for such site, after payment of any other costs described in Section 6(D) hereof that the Chief Executive Officer determines are to be paid therefrom, with any remaining proceeds, and shall be paid in full to the extent possible and if not possible, then pro-rata or on such other basis as the Chief Executive Officer may determine to be necessary to permit the issuance of such revenue obligations securities on a federally tax-exempt basis, if so

determined pursuant to Section 6(A) hereof, before any other eligible response costs are paid with remaining proceeds.

7. Registry.

At such time prior to the issuance of revenue obligation securities as the Authority receives the information necessary to do so, the Authority shall establish and publish a registry of all responsible parties who qualify to have their share of response costs paid pursuant to this Program, in accordance with 10 M.R.S.A. Section 1020-A(7).

Publication of the registry by the Authority does not guarantee a bond issuance or that proceeds of any bond issuance will be sufficient to pay the response costs of all or any eligible persons in full. The parties responsible for providing the Authority with the information necessary to establish the registry shall provide such information in sufficient time as to allow for preparation and publication of the registry and passage of the period of time to request reconsideration all prior to such time as the Authority deems in its sole discretion is necessary or desirable to proceed with issuance of revenue obligation securities.

8. Waiver of Rule.

The Chief Executive Officer may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the Program.

BASIS STATEMENT

The rule is necessary primarily to provide procedures to allocate the proceeds of revenue obligation securities to persons eligible to receive such proceeds pursuant to the Waste Motor Oil Disposal Site Remediation Program in the event that the premium assessed to pay the debt service on the bonds generates insufficient revenues to support issuance of bonds in an amount which will pay all response costs of all eligible persons. The rule also clarifies the application of certain provisions of Chapter 202 of the Rules of the Finance Authority of Maine (Revenue Obligation Securities Program) to bonds issued for purposes of the Waste Motor Oil Disposal Site Remediation Program.

The rule was adopted on an emergency basis on June 18, 2009, effective June 30, 2009. The Authority found that emergency adoption of the rule providing for priority allocation of bond proceeds was warranted since significant response costs associated with the Plymouth, Maine site are expected to be incurred by the responsible parties imminently and existing revenues will not currently permit issuance of bonds in an amount sufficient to cover all response costs. The Authority found such facts to represent an immediate threat to the public's general welfare and adoption of the rule amendment on an emergency basis necessary to avoid such threat.

A public hearing was held July 16, 2009, at which no comments were made. Written comments were received during the public comment period from Virginia K. Putnam, Esq., Rudman & Winchell, and Heather Parent, Esq., Eaton Peabody, on behalf of the Executive Committee of the Hows Corner (Plymouth, Maine) Superfund Site PRP Group (the "Plymouth PRP Group"). The comments submitted by the Plymouth PRP Group sought to confirm that Section

6(E) of the Rule provides that bond proceeds will pay future costs prior to past costs and that Section 6(F) of the Rule does not affect Section 6(E) but provides that, to the extent bond proceeds are available to pay past costs after the payment of future costs, such bond proceeds will be available to all eligible persons and that eligible persons whose past costs include loans from the Plymouth Waste Oil Loan Program must apply such bond proceeds to repayment of the loans before they may apply the bond proceeds to any other past costs. No changes to the Rule were deemed necessary since the comments of the Plymouth PRP Group reflect a correct understanding of the Rule.

ECONOMIC IMPACT ANALYSIS STATEMENT/FISCAL IMPACT NOTE:

- A. The cost of this rule to the agency will be covered by fees charged to the Waste Motor Oil Revenue Fund and/or collected from the bond sale as costs of issuance.
- B. The rule provides an economic benefit to those who are eligible to have their share of response costs paid for with proceeds of revenue obligation securities.
- C. The rule is not expected to have any material affect on competition or the employment market.
- D. The above statements were made based on the Authority's administration of similar programs and from information provided by the sponsors of the program.

The proposed rule will not impose any costs on municipalities or counties.

AUTHORITY: 10 M.R.S.A. Sections 969-A (14) and 10 M.R.S.A. Section 1020-A (8)

EFFECTIVE DATE: (EMERGENCY VERSION): June 30, 2009

EFFECTIVE DATE: September 6, 2009