Chapter 686 STANDARDS FOR ASSESSING ABILITY TO PAYDEDUCTIBLES UNDER THE STATE INSURANCE PROGRAM FOR OIL STORAGE TANKS

SUMMARY: This rule establishes the standards used by the Department of Environmental Protection to assess a person's ability to pay deductibles assessed under the State insurance program for owners and operators of oil storage tanks.

1. **Definitions**. The following terms, as used in this rule, have the following meanings:

   A. **Applicant.** "Applicant" means an owner or operator of an oil storage facility who has applied for coverage under the Fund Insurance Program.

   B. **Commissioner**. "Commissioner" means the Commissioner of Environmental Protection.

   C. **Department**. "Department" means the Department of Environmental Protection.

   D. **Fund Insurance Program.** Fund Insurance Program means the State insurance program for owners and operators of oil storage facilities. The program as established under 38 MRSA §568-A uses money from the Ground Water Oil Clean-up Fund to cover eligible clean-up costs and 3rd party damages associated with discharges from oil storage facilities.

   E. **Ground Water Oil Clean-up Fund.** The "Ground Water Oil Clean-up Fund" means the fund established under 38 MRSA §569-Ato be used by the department in carrying out the purposes of Maine's oil storage facility laws, 38MRSA §§561 through 570-L.

   F. **MRSA**. "MRSA" means the Maine Revised Statutes Annotated.

   G. **Personal residence**. "Personal residence" means a residential structure owned and occupied at least seasonally by an applicant eligible for coverage by the Ground Water Oil Clean-up Fund. A residential structure that is leased to others at any time is not considered an applicant's personal residence.

2. **Applicability**. An applicant determined by the commissioner or the State Fire Marshal to be eligible for coverage under the Fund Insurance Program is required under 38MRSA §568-A(2) to pay a standard deductible and conditional deductibles to the extent applicable. The commissioner may waive this requirement for deductibles assessed on an oil storage facility serving the applicant's personal residence if the commissioner determines the applicant does not have the financial resources to pay the assessed deductible amount. This chapter sets forth the standards used by the department to assess an applicant's ability to pay.

3. **Application required**. An applicant who believes they have insufficient financial resources may ask the commissioner to waive the deductible. Requests for review of an applicant's ability to pay must be submitted on a form provided by the commissioner and include proof of income, such as copies of tax returns, Social Security checks or yearly benefit statement, pension checks, bank statements or other copies of other documentation approved by the commissioner. The commissioner may request additional information from the applicant as needed to reach a determination on the applicant's ability to pay the deductible.

4. **Application deadlines**. An applicant's request for a waiver of the deductible must be returned to the department within 30 days from the date of the commissioner's cover letter transmitting the form to the applicant. The applicant may request an extension of time by submitting a written request via e-mail or mail to the departmental representative named in the cover letter. The request for an extension

shall be granted if reasonable cause is provided, however, the request may be denied if it is unreasonable or if an applicant has repeatedly requested extensions of time. The commissioner shall indicate in writing via e-mail or mail whether the request for an extension has been granted or denied.

If the applicant does not return the form and required attachments within the allotted time, the commissioner may send a letter stating that the request will be deemed withdrawn unless the applicant submits all required information within 15 working days of the date the letter was received. The letter shall be sent by certified mail, return receipt requested, or by another delivery method that provides proof of delivery. If the requested information is not received within the 15 day period, the commissioner may deem that the waiver request has been withdrawn and the applicant remains liable for the full amount due.

5. Review and decision. The commissioner will evaluate the applicant's ability to pay using the following criteria and will notify the applicant in writing of the decision regarding the applicant's ability to pay the amount owed.

A. An applicant is qualified for a waiver of the deductible if:

(1) The applicant's total income does not exceed the low-income level limit for their family size as most recently published by the U.S. Department of Housing and Urban Development (HUD) for their city or county of residence;

(2) The applicant does not earn business income or capital gains; and

(3) The applicant does not earn more than $400 per year in interest or dividends.

B. An applicant who does not meet the requirements of sub-section A above but who believes they do not have the financial resources to pay the amount owed may request a more detailed financial review. The applicant's request for further consideration must be submitted on a form provided by the commissioner and must include a list of itemized living expenses and proof of current debt. The commissioner will evaluate the applicant's ability to pay the amount owed using a screening tool such as the U.S. Environmental Protection Agency's INDIPAY model, which quantifies an individual's ability to afford the amount owed based on excess cash flow and debt capability. This evaluation will take into consideration the applicant's income, assets (e.g., bank account balances, retirement account market value, life insurance cash value, vehicle market value, personal and real estate property market value) and debt payments (e.g., mortgage, auto loan, educational loan, credit card interest).The commissioner will determine the applicant's ability to pay based on the applicant's ratio of debt payments to income, available assets and total liabilities.

6. Appeal. An applicant who disagrees with the commissioner's waiver decision may file an appeal with the Fund Insurance Review Board pursuant to 38 MRSA §568-B(2-C).

AUTHORITY: 38 MRSA §568-A(3)

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