

STANDARD PUBLIC REQUEST FORM FOR REPLACEMENT PAGES

Oil Fund Disbursement Board Odb 100-600
Chapter/Part _____

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Oil Fund Disbursement Board
Department Of Environmental Services
Waste Management Division
29 Hazen Drive
Concord, NH 03302-0095

CHAPTER Odb 100 OIL FUND DISBURSEMENT BOARD

Statutory Authority: RSA 541-A:16, I(a)

REVISION NOTE:

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 100. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 100 include the following documents:

#4759, eff 2-13-90

#5115, eff 4-16-91

PART Odb 101 DEFINITIONS

Odb 101.01 "Board" means the oil fund disbursement board established by RSA 146-D:4.

Source. (See Revision Note at chapter heading for Odb 100)
#5534, eff 12-21-92; rpld by #6543, eff 7-22-97; ss by #8456,
eff 10-25-05

Odb 101.02 "Confidential business information (CBI)" means information that is exempt from disclosure under RSA 91-A:5, IV, or information used in business that provides an advantage over competitors who do not know of or use it.

Source. (See Revision Note at chapter heading for Odb 100)
#5534, eff 12-21-92; rpld by #6543, eff 7-22-97; ss by #8456,
eff 10-25-05

PART Odb 102 BOARD ORGANIZATION

Odb 102.01 Responsibilities. The board shall administer the provisions of RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G.

Source. #8456, eff 10-25-05

Odb 102.02 Chairman and Vice Chairman.

(a) The board shall elect a chairman and vice chairman from among its members at the first meeting of each calendar year.

(b) The chairman shall preside at all meetings. In the absence of the chairman, the vice-chairman shall preside.

Source. #8456, eff 10-25-05

Odb 102.03 Office Hours, Office Location, Mailing Address and Telephone Number.

(a) The board's office location shall be at the:

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New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, New Hampshire

(b) The board's office shall be open to the public Monday through Friday, 8:00 am to 4:00 pm, excluding holidays.

(c) Correspondence shall be addressed to the board at:

Oil Fund Disbursement Board
New Hampshire Department of Environmental Services
Waste Management Division
P.O. Box 95
Concord, N.H. 03302-0095

(d) The board's telephone number shall be (603) 271-3899.

Source. #8456, eff 10-25-05

PART Odb 103 MEETINGS AND DELIBERATIONS

Odb 103.01 Meetings. The chairman shall establish the date, time and location of meetings. Each member of the board shall be notified in writing of the date, time, location and agenda for meetings. Notice of meetings shall be posted at the board office, through the General Court calendar, on the department of environmental services website and in the Rulemaking Register, as applicable.

Source. #8456, eff 10-25-05

Odb 103.02 Agenda and Meeting Record. The board shall, through the department of environmental services, prepare a written agenda in advance of a meeting, record the proceedings, and prepare a written summary of proceedings.

Source. #8456, eff 10-25-05

Odb 103.03 Procedures. Robert's Rules of Order Newly Revised, 10th Edition shall govern the procedures of the board.

Source. #8456, eff 10-25-05

PART Odb 104 INFORMATION MANAGEMENT

Odb 104.01 Availability of Records.

(a) All board records of meetings and official actions shall be public records unless deemed confidential under RSA 91-A:3, II or RSA 91-A:5.

(b) Board records of official actions under Odb 400 shall be available for public inspection on the internet through the department of environmental services One Stop Web Site <http://www2.des.state.nh.us/DESOnestop/BasicSearch.aspx> or successor systems. For all other official actions, meetings, and for the public without internet access, records shall be available through the department of environmental services during regular office hours, and with at least 48 hours notice.

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(c) Persons desiring copies of board records shall request the information being sought as clearly as possible.

(d) Persons desiring a verbatim transcript of a board meeting recording shall agree to pay the costs incurred by the board for transcription.

Source. #8456, eff 10-25-05; ss by #9917, eff 4-28-11

Odb 104.02 Records Retention.

(a) The board shall, through the department of environmental services, maintain records of activity conducted under its authority as follows:

- (1) Requests for reimbursement submitted under Odb 400 shall be maintained for 2 years after processing;
- (2) Notices of reimbursement issued under Odb 404.03(d) shall be maintained for 100 years after closure of the file; and
- (3) Records of activity under Odb 200 and records of board meetings shall be maintained for 3 years after the action date or meeting.

(b) The board shall, through the department of environmental services, maintain electronic records of activity conducted under its authority to the extent it is technically feasible and cost-effective, and in conformance with the requirements of RSA 294-E.

Source. #8456, eff 10-25-05; ss by #9917, eff 4-28-11

PART Odb 105 CLAIMS OF CONFIDENTIALITY

Odb 105.01 Procedure for Making a Claim of Confidentiality.

(a) Any person claiming that information submitted to the board under Odb 200 or Odb 400 is CBI, shall assert that claim at the time the information is initially submitted by stamping or otherwise marking each page of such information with the notation “confidential” or “confidential business information”. If the claimant believes that only part of the information on a page is CBI, the claimant shall identify all portions to which the claim applies at the time of submission, and shall designate only that portion of the page as “confidential” or “confidential business information”.

(b) If the board receives information from another agency of the state or federal government that is designated as CBI, the board shall exercise the same degree of confidentiality for the information as is exercised by the sending agency to the extent authorized by New Hampshire law.

(c) If a claim of confidentiality is made for any information that falls within any category identified in Odb 105.02, the information shall not be treated as confidential.

Source. #8456, eff 10-25-05

Odb 105.02 Non-Confidential Information.

(a) Any information for which no claim of confidentiality was made at the time of the initial submission shall not be considered confidential.

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(b) Comments submitted by any person during the public comment period of any administrative proceeding shall not be considered confidential.

(c) Information that is in the public domain shall not be considered confidential.

(d) Information that demonstrates a claimant violated any statute or rule administered by the board shall not be confidential.

Source. #8456, eff 10-25-05

Odb 105.03 Release of Information. The board shall release information not identified as CBI, in accordance with RSA 91-A:4, IV.

Source. #8456, eff 10-25-05

CHAPTER Odb 200 OIL FUND DISBURSEMENT BOARD PROCEDURES

REVISION NOTE

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 200. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 200 include the following documents:

#4760, eff 2-13-90

#5115, eff 4-16-91

Statutory Authority: RSA 146-D:5, I, RSA 146-E:6, I, RSA 146-F:5, I, RSA 146-G:11 and RSA 541-A:16, I(b)

PART Odb 201 PURPOSE AND APPLICABILITY

Odb 201.01 Purpose.

(a) The purpose of this chapter is to provide uniform procedures for the conduct of all non-adjudicative and adjudicative proceedings, including requests for reconsideration, declaratory rulings, rulemaking petitions, and hearings in contested cases.

(b) This chapter is intended to supplement the procedures established by RSA 541-A and any procedures or criteria established under any statute implemented by the oil fund disbursement board.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97, EXPIRED: 7-22-05

New. #8490-A, eff 11-22-05

Odb 201.02 Applicability.

(a) The procedures set forth in this chapter shall apply to all proceedings conducted by the oil fund disbursement board, and shall be in addition to any applicable requirements of RSA 541-A.

(b) All board proceedings shall be subject to the provisions of RSA 91-A.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97, EXPIRED: 7-22-05

New. #8490-A, eff 11-22-05

PART Odb 202 DEFINITIONS

Odb 202.01 Definitions.

(a) "Board" means the oil fund disbursement board established by RSA 146-D:4.

(b) "Department" means the New Hampshire department of environmental services.

(c) "Presiding officer" means the chairman of the board. In the absence of the chairman, the vice chairman shall act as the presiding officer.

Source. (See Revision Note at chapter heading Odb 200) #5534, eff 12-21-92 , EXPIRED: 12-21-2000

New. #8490-A, eff 11-22-05

PART Odb 203 HEARINGS IN CONTESTED CASES

Odb 203.01 Waiver of Rules. Prior to the commencement of hearing procedures, any party may submit a written request to waive the application of any of the hearing rules of this part not required by statute. If no party objects to the request, and if the board determines that granting the request is necessary to conduct a more efficient hearing, then the rule or rules shall be waived and so noted in the hearing record.

Source. #8490-A, eff 11-22-05

Odb 203.02 Request for Hearing.

(a) Any person aggrieved by a decision of the board or the department may request a hearing within 30 days of the decision notification date. Such requests shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.

(b) The board shall establish a date and time for a hearing, and provide notice in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 203.03 Place of Hearings. All hearings before the board shall be held at a location designated by the board and notice shall be provided in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 203.04 Computation of Time. All time periods referenced in this chapter shall be calendar days, commencing with the first day following the date of an action. If the last day of the time period falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Source. #8490-A, eff 11-22-05

Odb 203.05 Extensions of Time.

(a) Any party requesting a hearing may petition the board to extend any time limit prescribed by this chapter for good cause as specified in (d) below. A request for an extension shall be submitted in writing to the board prior to the expiration of the prescribed period and shall state the reasons for the extension request. A copy of the request shall also be sent to all other parties involved.

(b) The department or any other party may object to the request by filing a written objection with the board within 5 days of receipt of the request, stating the reasons why the request should not be granted.

(c) If there is no opposition to the request and if the delay would not cause prejudice, the presiding officer shall grant the request. If an objection to a request is filed, the presiding officer shall consider whether good cause exists to grant the request and shall rule on the request within a reasonable time.

(d) Good cause shall include such contingencies as an accident, sudden illness, death of a family member, or other circumstances beyond the control of the party, which prevents the party from meeting the time limit.

(e) The board shall notify all parties of board actions through the department.

Source. #8490-A, eff 11-22-05

Odb 203.06 Date of Filing. All exhibits, findings of fact, correspondence, motions, petitions, applications and any other documents governed by this part, shall be deemed to have been filed with or received by the board on the actual date of receipt by the board.

Source. #8490-A, eff 11-22-05

Odb 203.07 Identification of Communications. Communications shall contain the name and address of the communicator and the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding shall be given.

Source. #8490-A, eff 11-22-05

Odb 203.08 Appearance Before the Board. Appearances may be entered either in writing or upon the record of the hearing. Other persons, not parties to a proceeding but having an interest in the subject matter of the proceeding, may participate in the hearing to the extent that they are able to establish an interest, other than that of the public generally, in the subject matter of the proceeding.

Source. #8490-A, eff 11-22-05

Odb 203.09 Representatives. Any party to a hearing before the board may be represented by an individual as that party may designate, in accordance with Odb 203.08.

Source. #8490-A, eff 11-22-05

Odb 203.10 Notice of Hearings. When a hearing is scheduled, notice shall be provided in writing, to all parties or other interested persons, at least 15 days prior to the hearing date. The notice shall specify the date, time, place and subject matter of the hearing.

Source. #8490-A, eff 11-22-05

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Odb 203.11 Hearing Record. The record of the hearing shall consist of a verbatim recording of the hearing, documentary evidence introduced by the parties and documents of which official notice has been taken by the board.

Source. #8490-A, eff 11-22-05

Odb 203.12 Retention of Board Records of Decisions or Orders.

(a) The board shall, through the department of environmental services, maintain records of decisions or orders issued pursuant to RSA 541-A:35 for 3 years after the date of the final decision or order.

(b) The board shall, through the department of environmental services, maintain electronic records of decisions or orders issued pursuant to RSA 541-A:35 to the extent it is technically feasible and cost-effective, and in conformance with the requirements of RSA 294-E.

Source. #8490-A, eff 11-22-05; ss by #9918-A, eff 4-28-11

Odb 203.13 Hearing Procedures.

(a) The presiding officer shall:

(1) Regulate the course of the hearing;

(2) Rule upon issues of procedure; and

(3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.

(b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.

(c) Any person appearing before the board shall be required to state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

Source. #8490-A, eff 11-22-05

Odb 203.14 Burden and Standard of Proof.

(a) The party asserting a proposition or challenging a decision of the board shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

(b) For purposes of this section, “proving the truth of the proposition by a preponderance of the evidence” means what is sought to be proved is more probable than not.

Source. #8490-A, eff 11-22-05

Odb 203.15 Pre-Hearing Exchange of Information.

(a) At least 10 days prior to the commencement of a hearing, the parties involved shall provide the board with the following:

(1) A list identifying each witness expected to be called at the hearing with a brief description of that witness’s testimony;

(2) A list of all exhibits expected to be presented at the hearing; and

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(3) Any requests for changes to or waivers of the standard procedures as specified in this chapter or other matters concerning the conduct of the hearing.

(b) If the board requests information other than that specified in (a), above, from the parties involved, the board shall provide written notice to the parties.

(c) A party receiving a request for information pursuant to (b), above, shall provide the information requested within 10 days.

Source. #8490-A, eff 11-22-05

Odb 203.16 Documentary Evidence.

(a) Evidence, which is relevant and material to the subject matter of the hearing, shall be admissible. Evidence, which is irrelevant, immaterial, or unduly repetitious, shall be excluded.

(b) The board shall include in its final decision those facts of which it took official notice unless those facts are included in the transcript of the record.

(c) All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide the board with 20 copies of such documents or photographs, unless the presiding officer determines that such documents or photographs are of such form, size or character as not to be reasonably suitable for reproduction.

(d) All written statements and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the board's office in Concord during normal business hours.

(e) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. Nothing herein shall be construed to permit interlocutory appeal of rulings of the presiding officer.

Source. #8490-A, eff 11-22-05

Odb 203.17 Exhibits.

(a) Where evidence to be presented consists of tabulations and figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.

(b) Space shall be provided in the upper right hand corner of each such exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.

(c) The original exhibit and 20 copies thereof shall be provided to the board and at least 1 copy shall be provided to all other parties.

Source. #8490-A, eff 11-22-05

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Odb 203.18 Advance Filing of Exhibits. Any party intending to use exhibits shall file an original and 20 copies thereof with the board at least 15 days prior to the hearing at which such exhibits are to be introduced.

Source. #8490-A, eff 11-22-05

Odb 203.19 Signatures. Every application, exhibit, notice, motion, petition, complaint, brief and memorandum shall be signed by the person filing the document, or by one or more attorneys in their individual names or by other duly designated representative on behalf of the person filing the document.

Source. #8490-A, eff 11-22-05

Odb 203.20 Continuance.

(a) Any party may request that a hearing conducted pursuant to this Part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party or a representative or critical documents.

(b) Requests for a continuance made prior to a hearing shall be in writing and shall state the reason(s) for the request. Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.

(c) If the presiding officer determines that reasonable cause exists and that no prejudice will result from the delay, the presiding officer shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened.

(d) The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Source. #8490-A, eff 11-22-05

Odb 203.21 Recess and Adjournment. The presiding officer shall, from time to time, at the request of any party or members of the board, recess or adjourn any hearings as may be necessary to the orderly conduct of the proceeding.

Source. #8490-A, eff 11-22-05

Odb 203.22 Conclusion of Hearing.

(a) Prior to the conclusion of the hearing, the presiding officer shall, upon request and at his or her discretion, direct that the record be left open for a specified period of time to accommodate the filing of documents not available at the hearing.

(b) If the presiding officer determines that such documents are necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the additional documents shall be filed.

Source. #8490-A, eff 11-22-05

Odb 203.23 Reopening of the Record.

(a) At any time prior to a final decision, any party to a hearing may request the presiding officer to reopen the record to consider documents or arguments not previously considered.

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(b) If the presiding officer determines that such documents or arguments are necessary to a full consideration of the subject matter of the hearing, the presiding officer shall reopen the record and written notice shall be given to all parties.

Source. #8490-A, eff 11-22-05

Odb 203.24 Decision of Board. Following the conclusion of a hearing, or the closing of the record, the board shall issue a notice of decision to all parties through the department.

Source. #8490-A, eff 11-22-05

Odb 203.25 Withdrawal of a Presiding Officer.

(a) Any interested party may submit a request to the board for the withdrawal of the presiding officer from a matter for good cause.

(b) For purposes of this section, good cause for withdrawal shall be that the presiding officer has an objectively demonstrated bias for or against one or more of the parties. Good cause shall not include that the presiding officer is an employee of the department.

(c) The party requesting the withdrawal of the presiding officer shall support the request with sworn testimony or other evidence submitted with the motion.

(d) For purposes of this section, an “objectively-demonstrated bias” means that the party requesting the presiding officer to withdraw submits evidence that shows, by a preponderance of the evidence, that the presiding officer has had personal dealings with a party to the proceeding that would cause a reasonable person to believe that as a result of the dealings, the presiding officer will discount or ignore evidence and law to find in favor of or against the party.

(e) The board shall consider the request and make a determination within a reasonable time.

Source. #8490-A, eff 11-22-05

Odb 203.26 Roles in Adjudicative Proceedings. In any adjudicative hearing, department staff may be called as witnesses by the board or any party to the hearing to present testimony and evidence as requested.

Source. #8490-A, eff 11-22-05

PART Odb 204 NON-ADJUDICATIVE PUBLIC HEARINGS

Odb 204.01 Applicability. With the exception of rulemaking hearings under Odb 205, this part shall apply to the conduct of hearings held by the board to provide information and receive public comment in any matter that is not a contested case as defined by RSA 541-A:1, IV.

Source. #8490-B, eff 11-22-05; ss by #10481, eff 12-3-13

Odb 204.02 Hearings. A non-adjudicative public hearing shall be held:

(a) To receive evidence and testimony on reimbursement determinations and other matters required by the statute or rules;

(b) For any matter for which the board is required by law or by these rules to hold a hearing that is not a contested case; and

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(c) For any matter for which the law does not require the board to hold a hearing but for which the board believes a public hearing would be of benefit.

Source. #8490-B, eff 11-22-05; ss by #10481, eff 12-3-13

Odb 204.03 Record.

(a) A record of the hearing shall be kept by tape recording or other method, which will provide a verbatim record.

(b) Copies of the recording shall be provided to any person upon request and payment of the costs of the tape(s) and staff time to make the copy, or of staff time only if enough blank tapes to copy the hearing tape(s) are submitted with the request.

(c) If any person desires a transcript of the hearing tape(s), the board shall prepare or cause to be prepared a transcript provided the cost of the transcription is paid by the person(s) requesting the transcript. If the department hires another person to prepare the transcript, the person requesting the transcript shall be billed directly by and shall directly pay the person preparing the transcript.

Source. #8490-B, eff 11-22-05; ss by #10481, eff 12-3-13

Odb 204.04 Testimony.

(a) Any individual wishing to submit written testimony or exhibit(s) at a non-adjudicative public hearing shall do so to the presiding officer, provided the individual signs and dates such testimony or exhibit(s).

(b) Any individual wishing to testify at a non-adjudicative public hearing shall submit his/her name, address, and whom s/he represents, if anyone, in writing to the presiding officer. The presiding officer shall call each individual to present his/her testimony. The presiding officer shall encourage individuals who plan to testify orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(c) At the conclusion of testimony of each individual, the individual shall remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.

(d) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Source. #8490-B, eff 11-22-05; ss by #10481, eff 12-3-13

Odb 204.05 Closing the Hearing and the Record.

(a) The presiding officer shall close the hearing when s/he determines that no one has further questions or comments that are relevant to the subject of the hearing.

(b) At a non-adjudicative public hearing other than a rulemaking hearing, if additional time is requested to submit written testimony as specified in Odb 205.04(b) or supplemental information which the presiding officer determines to be relevant to the subject of the hearing, s/he shall designate a specific time period for the record to remain open to receive such information.

Source. #8490-B, eff 11-22-05; ss by #10481, eff 12-3-13

Odb 204.06 Continuances.

(a) At any non-adjudicative public hearing, if anyone requests a continuance and the presiding officer determines that the public will be best served by continuing the hearing and that any prejudice caused to any person as a result of the continuance is outweighed by the benefit to the public of granting the continuance, the presiding officer shall order that the hearing be continued to a later date, time, and place.

(b) If such later date, time, and place are known at the time of the hearing that is being continued, the presiding officer shall state the date, time, and place on the record.

(c) If such later date, time, and place are not known at the time of the hearing that is being continued, the presiding officer shall state how notice will be given of the date, time, and place of the continued hearing.

Source. #8490-B, eff 11-22-05; ss by #10481, eff 12-3-13

PART Odb 205 RULEMAKING HEARINGS

Odb 205.01 Public Hearing. The board shall hold a public hearing when proposing to adopt, readopt, amend or repeal rules.

Source. #8490-A, eff 11-22-05

Odb 205.02 Notice of Hearing. The board shall provide notice for a public hearing in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 205.03 Record. A record of the public hearing shall be kept by verbatim recording.

Source. #8490-A, eff 11-22-05

Odb 205.04 Hearing Procedures.

(a) The presiding officer shall:

- (1) Regulate the course of the hearing;
- (2) Rule upon issues of procedure; and
- (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.

(b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.

(c) Any person providing oral testimony shall state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

(d) Any person wishing to submit written testimony shall do so to the presiding officer provided the person signs and dates such testimony.

(e) The presiding officer shall call each person to present testimony and encourage persons testifying orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(f) At the conclusion of testimony of each person, the presiding officer shall encourage the person to remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.

(g) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Source. #8490-A, eff 11-22-05

Odb 205.05 Closing the Hearing and the Record.

(a) The presiding officer shall close the hearing upon determining there are no further questions or comments that are relevant to the subject of the hearing.

(b) The record shall remain open until the date specified in the notice published in the New Hampshire Rulemaking Register.

Source. #8490-A, eff 11-22-05

PART Odb 206 RULEMAKING PETITIONS

Odb 206.01 Filing. Any person wishing to file a rulemaking petition shall file the original and one copy of the petition with the board.

Source. #8490-A, eff 11-22-05

Odb 206.02 Format and Content of Petition. A person filing a petition to adopt, amend, or repeal a rule shall provide the following information:

(a) The exact legal name of each person requesting the adoption, amendment, or repeal of the rule, with a residence address or principal place of business of the person;

(b) Whether the person is asking the board to adopt, amend, or repeal a rule;

(c) If the petition is to adopt a rule:

(1) The chapter, part, and section, by alphanumeric code, where the person proposes the rule language to be inserted; and

(2) The proposed rule language;

(d) If the petition is to amend a rule:

(1) The specific rule, by alphanumeric code, that is the subject of the petition; and

(2) The proposed rule language;

(e) If the petition is to repeal a rule, the specific rule, by alphanumeric code, that is the subject of the petition;

(f) A written statement of why the petitioner wants the board to undertake the action requested and how the action is consistent with RSA 146-D, RSA 146-E, RSA 146-F, RSA 146-G or RSA 541-A, as applicable; and

(g) Such other information the person filing the petition deems pertinent and relevant to their request, including written testimony.

Source. #8490-A, eff 11-22-05

Odb 206.03 Board Review.

(a) Upon receipt of a petition to adopt, amend, or repeal a rule, the board shall proceed in accordance with RSA 541-A: 4, I.

(b) The petition shall be granted and a rulemaking proceeding shall be initiated if the board determines that the proposed action is:

- (1) Consistent with state and federal law and policy; and
- (2) In the best interests of the state.

Source. #8490-A, eff 11-22-05

PART Odb 207 REQUESTS FOR RULE EXPLANATION

Odb 207.01 Request for Rule Explanation.

(a) Any person may request, at any time before 30 days after the final adoption of the rule, that the board issue an explanation of a rule by filing an original and one copy of the request.

(b) The request shall include:

- (1) The chapter, part or section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s) which is the subject of the request; and
- (2) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents.

Source. #8490-B, eff 11-22-05; ss by #10481, eff 12-3-13

PART Odb 208 PETITION FOR DECLARATORY RULING

Odb 208.01 Applicability. Any interested person may submit a petition for a declaratory ruling on the applicability of any statute, rule, or order administered or enforced by the board. The rules in this part shall apply to any petition for such ruling.

Source. #8490-A, eff 11-22-05

Odb 208.02 Filing. The original and one copy of a petition for a declaratory ruling shall be filed with the board.

Source. #8490-A, eff 11-22-05

Odb 208.03 Format and Content of Petitions. Petitions for rulings shall include the following:

(a) The legal name of each person requesting the action, with a resident address or principal place of business of the person;

(b) The chapter, part, section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s), which is the subject of the request;

(c) The petitioner's signature and date signed;

(d) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents; and

(e) A concise and explicit statement of why the petitioner wants the board to rule on the statutory provision, rule or order.

Source. #8490-A, eff 11-22-05

Odb 208.04 Processing of Petitions.

(a) If the board determines that the petition is deficient, the board shall notify the petitioner within 30 days, in writing, of the specific deficiencies and allow the petitioner to amend the petition.

(b) The board shall take one of the following actions in response to a petition:

(1) Issue a ruling responsive to the petition within 90 days; or

(2) If deemed necessary, request the opinion of the department of justice and issue a ruling within 90 days following receipt of the department of justice opinion.

Source. #8490-A, eff 11-22-05

PART Odb 209 WAIVER OF IMPORT FEE PENALTIES AND INTEREST

Odb 209.01 Waiver of Import Fee Penalties And Interest

(a) "Distributor" means "distributor" as defined in RSA 146-D:2, I.

(b) "Penalties" means penalties assessed by the department of safety under RSA 146-D:3, III, RSA 146-E:3, III or RSA 146-F:3, II.

(c) Distributor penalties shall be deemed waived by the board no more than once in a 12-month reporting period, if the distributor filed timely reports for the prior 11 months, or if the total penalty is \$10 or less. Related interest shall not be waived.

(d) Distributor penalties and related interest assessed in error shall be deemed waived by the board.

(e) Notice to the distributor that penalties were deemed waived under paragraph (c), or penalties and interest were deemed waived under paragraph (d), shall be in the form of a refund issued by the department of safety if the distributor had already paid the penalty/interest assessment, or a credit if the distributor had not yet paid. The distributor shall pay any interest still due under paragraph (c) in accordance with the department of safety invoice.

(f) The board shall approve a written request for waiver of penalties not deemed waived under paragraphs (c) and (d), upon finding the circumstances were beyond the knowledge or control of the distributor, including but not limited to, a fire or natural disaster. Related interest shall not be waived. The board shall, through the department of environmental services, provide written notice of its decision to the distributor within 30 business days, with a copy to the department of safety.

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(g) If a written request for waiver under paragraph (f) is approved, the board notice copy shall be authorization for the department of safety to issue a penalty refund if the distributor had already paid the penalty assessment or a penalty credit if the distributor had not yet paid. The distributor shall pay any interest still due in accordance with the department of safety invoice. If a waiver is denied, the distributor shall pay any penalty and interest still due.

Source. #8490-B, eff 11-22-05; ss by #9918-B, eff 4-28-11; ss by #10580, eff 4-30-14

CHAPTER Odb 300 - REPEALED

Source. #4761, eff 02-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 400 RULES FOR REIMBURSEMENT UNDER RSA 146-D, RSA 146-E, RSA 146-F AND RSA 146-G

Statutory Authority: RSA 146-D:5, I; RSA 146-E:6, I, RSA 146-F:5, I, and RSA 146-G:11

PART Odb 401 PURPOSE AND SCOPE

Odb 401.01 Purpose. The purpose of this chapter is to establish procedures for reimbursement under RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97; EXPIRED: 7-22-05

New. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 401.02 Applicability. This chapter shall apply to reimbursement for costs incurred on or after the effective date of this chapter.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97; EXPIRED: 7-22-05

New. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 402 DEFINITIONS

Odb 402.01 Definitions.

(a) "Applicant" means:

- (1) A professional engineer or professional geologist licensed in New Hampshire performing corrective action, a corrective action contractor, or an individual or company performing Env-Ws 300 public water supply gasoline ether monitoring or notification under RSA 485:16-a, II, under contract with an owner;
- (2) The New Hampshire department of transportation or political subdivisions of the State performing corrective action under a written agreement with an owner concerning management of contamination encountered during construction projects near the owner's property; or
- (3) The department.

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- (b) "Board" means the oil fund disbursement board established by RSA 146-D:4.
- (c) "Bodily injury costs" means damages proven by expert medical testimony as to diagnosable personal injury, illness, or other bodily injury, including emotional distress accompanied by physical manifestations suffered by a party other than an owner or its agents as a result of a discharge.
- (d) "Capital equipment" means electronic, chemical, mechanical or structural equipment installed to perform contamination source removal or treatment, which has a long-term life greater than 2 years and has an initial value or purchase cost, either individually or as an aggregate, of \$10,000.00 or more.
- (e) "Compliance" means conformance with applicable local, state and federal facility operating requirements, including the department guidance document titled, "Best Management Practices for the Installation and Upgrading of On-Premise-Use Heating Oil Tanks" (2008 edition).
- (f) "Contamination" means "contamination" as defined in Env-Or 602.07.
- (g) "Contract" means a formal written agreement that specifies the service performed and the terms and conditions of the service.
- (h) "Corrective action" means activities performed in accordance with RSA 146-G or department rules to contain a discharge or remedy contamination including reasonable restoration of property damaged while performing corrective action, which is not covered under an owner's or corrective action service provider's insurance. Corrective action does not include restoration of property damaged by a discharge.
- (i) "Corrective action contractor" means an individual or company that is primarily in the business of providing corrective action services, has the necessary equipment and facilities, and employs appropriately-trained, experienced personnel with current U.S. Occupational Safety and Health Administration certification.
- (j) "Corrective action report" means a report on site conditions or cleanup submitted in accordance with department rules.
- (k) "Deductible" means initial costs incurred for which an owner is liable to the fund under RSA 146-D:6, II, RSA 146-E:6, I or RSA 146-E:6, II.
- (l) "Department" means the New Hampshire department of environmental services.
- (m) "Discharge" means a spill or release of oil, fuel oil, motor oil, gasoline, or gasoline ethers.
- (n) "Facility" means:
- (1) A "bulk storage facility" as defined in RSA 146-D:2, V or RSA 146-E:2, I;
 - (2) An "on-premise-use facility" as defined in RSA 146-E:2, III;
 - (3) A "motor oil storage facility" as defined in RSA 146-F:2, II;
 - (4) An "underground storage facility" as defined in RSA 146-D:2,II; or
 - (5) "Potential contamination sources" as defined in RSA 485-C:7, II, as applicable.
- (o) "Financial statement" means a complete accounting of a facility owner's financial condition prepared in accordance with generally accepted accounting practices or standards including a statement of

assets and liabilities, income statement, statement of cash flows, and statement of whether the owner is creditworthy.

(p) "Fund" means the oil discharge and disposal cleanup fund established by RSA 146-D, the fuel oil discharge cleanup fund established by RSA 146-E, the motor oil discharge cleanup fund established by RSA 146-F, or the gasoline remediation and elimination of ethers fund established by RSA 146-G, as applicable.

(q) "Other insurance" means private insurance coverage for corrective action or third-party damage costs that is valid and collectible by the owner, and includes private insurance held by the owner through either a wholly-owned or jointly-owned subsidiary in the business of providing insurance coverage to the owner or to the owner and others.

(r) "Owner" means the person having legal ownership of a facility, land under RSA 146-D:6, I, RSA 146-D:6, I-a, RSA 146-E:6, I or RSA 146-F:5, I, public water supply system, non-public water supply system, private water supply or other eligible party under RSA 146-G.

(s) "Performance standard" means the expected level of completeness, quality, and/or reduction in measurable contamination when performing corrective action based on the criteria in RSA 146-G or department rules.

(t) "Person" means any company and its parents, subsidiaries, business units and affiliates established under any legal form, an individual, group, trust, firm, joint stock company, corporation including a government corporation, partnership, association, limited liability company, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity including those wholly owned by the same individual or parent entity, and legal entities that share identical or interlocking boards of directors.

(u) "Project cost ledger" means a department-approved electronic spreadsheet, accounting software, or other electronic application or system, that itemizes all costs and charges to a fund-eligible project, and ties those costs and charges to a general ledger accounting system.

(v) "Property damage" means physical damage to, or loss of use of, tangible property owned by a party other than the facility owner or his/her employees.

(w) "Reimbursement" means an assignment of money from the fund.

(x) "Site" means "site" as defined in Env-Or 602.28.

(y) "Third-party damages" means damages, which are an obligation of an owner as a result of a court-approved settlement or judgment in a civil action against the owner by a party who has suffered bodily injury or property damage as defined in this part.

(z) "Upload submittal" means a reimbursement request submitted via the department One Stop Data Provider web site <https://www2.des.state.nh.us/OnestopDataProviders/DESLogin.aspx>, or successor systems, in portable document format (PDF).

(aa) "Web-based submittal" means a reimbursement request submitted by an applicant via the department One Stop Data Provider web site <https://www2.des.state.nh.us/OnestopDataProviders/DESLogin.aspx>, or successor systems, using an application developed and maintained by the department for that purpose.

(ab) “Web-based submittal with expedited payment” means a web-based submittal that is processed for payment within 30 days.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 403 REIMBURSEMENT REQUEST DOCUMENTS

Odb 403.01 Invoice Summary for Paper and Upload Submittals.

(a) An owner or applicant submitting a paper or upload submittal reimbursement request shall include an invoice summary on a form provided by the department, or a facsimile, that lists each contractor invoice and includes the following information:

- (1) A page header including the department site number, project number, site/project name, and reimbursement request number;
- (2) For each invoice:
 - a. Contractor invoice number and date;
 - b. The department work scope and budget approval date, if applicable;
 - c. The department phase and class code;
 - d. Contractor name, and if applicable, subcontractor name;
 - e. Summary description of work for each phase and class;
 - f. Work scope budget amount;
 - g. Payment amount requested; and
 - h. Work scope budget balance, if any; and
- (3) The total work scope budget and budget balance, and total amount requested.

Source. #8491, eff 11-22-05; ss by #9935-B, eff 9-1-11

Odb 403.02 Reimbursement Authorization Form.

(a) Reimbursement authorization forms shall be those provided by the board.

(b) An owner submitting a reimbursement authorization form shall include the following information:

- (1) Authorization information including the type of facility or project and whether reimbursement is sought for corrective action costs or third-party damages;
- (2) Facility, property, and project information including:
 - a. Facility, property, and project name;
 - b. Address;
 - c. Location town;
 - d. The department facility identification number if applicable;

- e. The department project number; and
- f. For an initial authorization, the date of discharge discovery;

(3) Owner and insurance information including:

- a. Owner name;
- b. Mailing address;
- c. Daytime phone number;
- d. Whether the owner is a new owner since the last authorization;
- e. Number of facilities owned if more than one; and
- f. If an initial authorization for a discharge, whether other insurance coverage is available; and

(4) The owner's or corporate officer's signature and date certifying the following liability statement and affirmation: "I hereby certify that the facility referenced above is currently in compliance, or I am the owner of land where a compliant facility was located, or I am a duly authorized officer of the entity that owns the compliant facility or land where a compliant facility was located. I understand that a 'deductible' or deductible balance may be applied against any amounts reimbursed from the fund. If reimbursement is made to an 'applicant', I understand that the deductible or deductible balance amount may be billed and that said amount is due within 30 days of the billing date, unless the board approves periodic payments. I understand the funds under RSA 146-D, RSA 146-E and RSA 146-F only provide excess insurance coverage. I declare that the representations made in this reimbursement authorization are to the best of my knowledge true and correct, and agree to reimburse the fund for any payments made based upon incorrect information on this form, or incorrect reimbursement submittal information. If an officer of the owner, I affirm that I have been duly authorized by the corporation, LLC, LLP, or other corporate entity to bind the corporation, LLC, LLP, or other corporate entity, and to make the above declarations. I also affirm that the corporation, LLC, LLP, or other corporate entity has made all filings and paid all fees required by the New Hampshire Secretary of State."

Source. #8491, eff 11-22-05; ss by #9935-B, eff 9-1-11

PART Odb 404 REIMBURSEMENT REQUEST SUBMITTAL AND BOARD REVIEW

Odb 404.01 Requests for Reimbursement.

(a) With the exception of requests submitted by the department, requests for reimbursement shall be submitted within one year of completing corrective action.

(b) Requests for reimbursement for third-party damage costs shall be submitted within 60 days of notice of a final court order or court approved settlement for bodily injury costs or property damage costs as defined in this chapter.

(c) An owner may submit a request for reimbursement for third-party damage costs only if notification was provided pursuant to Odb 408.01.

(d) An owner or applicant may submit a request for reimbursement only if the limits of coverage under other valid and collectible policies of insurance held by the owner, are reached.

(e) An applicant may only submit a request for reimbursement for services provided by the applicant, including subcontractors and suppliers.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 404.02 Reimbursement Submittal Requirements.

(a) Requests for reimbursement shall include the following:

- (1) For an owner's initial request, a completed reimbursement authorization form which includes the information required under Odb 403.02;
- (2) For paper submittals, upload submittals, or an initial web-based submittal a list or brief description of the information included in the reimbursement request submittal, in the form of a cover or transmittal letter;
- (3) For paper or upload submittals a summary of invoiced expenses which includes the information required under Odb 403.01;
- (4) A copy of the work scope approval notice under Odb 407.01(d), if applicable;
- (5) Copies of all contractor and subcontractor invoices and contractor personnel timesheets or timesheet summary;
- (6) Tabulation of bid item quantities, bid item price, bid item total cost, and total job cost for bid-based work, if applicable;
- (7) A copy of the contract under Odb 406.03 if applicable;
- (8) Employee payroll records, cost of employee benefits and equipment operating cost data when corrective action is performed by the owner;
- (9) Other insurance information required under Odb 405.02 if applicable;
- (10) A copy of the agreement stating a facility owner has a legal obligation to continue corrective action after ownership is conveyed, if applicable;
- (11) A copy of the final court order or court approved settlement for third-party damages;
- (12) For an initial request, facility compliance information, if applicable; and
- (13) For an initial request, a completed department "Alternate W-9 Form" to obtain a vendor number, if applicable.

(b) A re-submittal of information related to a request when the approved amount was less than the requested amount shall be re-submitted within 180 days of the action date and shall include an explanation of the basis of the re-submittal and a copy of the reimbursement approval notice issued under Odb 404.03(d) indicating which costs are being re-submitted.

(c) Reimbursement requests shall be submitted concurrently with the corrective action report, if applicable.

(d) No reimbursement request shall be submitted that includes costs incurred by an owner or applicant after corrective action is deemed complete by the department and a corrective action report was provided, if applicable.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 404.03 Reimbursement Review Procedures.

(a) Upon receipt of a request for reimbursement, the board shall, through the department, determine if the request is complete pursuant to Odb 404.01 and Odb 404.02. Incomplete requests shall be returned within 30 days of receipt.

(b) Upon receipt of a complete reimbursement request, the board shall request that the department report its recommendation for reimbursement within 120 days of the date of receipt.

(c) The board shall, through the department, determine the amount of reimbursement based on the reimbursable cost criteria of Odb 407 and Odb 408 and shall authorize the state treasurer to disburse said amount from the fund.

(d) The board shall, through the department, issue a notice of reimbursement to the owner or applicant within 30 days of a reimbursement determination.

(e) If the reimbursement amount is less than the requested amount, or if no reimbursement is due, the notice of reimbursement shall indicate the reasons for a reduction in payment or non-payment.

(f) All reimbursements from the fund for corrective action performed by the department shall be paid directly to the department.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 404.04 Reimbursement Request Priority.

(a) The board shall consider requests for reimbursement from the fund as follows:

- (1) Web-based submittals with expedited payment and corrective action performed by the department first priority;
- (2) Web-based submittals second priority;
- (3) Upload submittals third priority; and
- (4) Paper submittals fourth priority.

(b) The board shall consider requests for reimbursement in the chronological order received regardless of the submittal method, if the balance in the fund is not sufficient to pay all uncontested reimbursement requests.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 405 FUND AVAILABILITY AND OTHER INSURANCE

Odb 405.01 Fund Availability.

(a) The fund shall be available for reimbursement of costs incurred for corrective action, third-party damages, public water supply gasoline ether monitoring under Env-Ws 300, and providing notification under RSA 485:16-a, II.

(b) The fund shall be available to the owner of a facility for the first discharge if the facility is in compliance.

(c) The fund shall be available to the owner of a facility for subsequent discharges if the owner maintains compliance after compliance is achieved, as specified in (b) above.

(d) The fund shall be fully available to owners of on-premise-use facilities or land where on-premise-use facilities are located for corrective action cost and third-party damage cost reimbursement if the facility is in compliance by July 1, 2015.

(e) With the exception of owners qualifying under paragraph (f) below, owners of on-premise-use facilities or land where on-premise-use facilities are located, that are not in compliance by July 1, 2015, shall be subject to a reduction in corrective action cost and third-party damage cost reimbursement in the amount of \$500 for the state, political subdivisions, non-profit organizations, school districts and residences, and \$1,000 for businesses.

(f) The fund shall be available to meet the requirements of RSA 146-E:4, I and II, subject to the following:

(1) The on-premise-use facility is located at a property that is the primary residence of the owner including a single-family home, a duplex, a manufactured home, a farm, or a property where the owner also operates a small business;

(2) The owner does not hold title to, or have an interest in, any income producing property other than that specified in (1) above, including but not limited to, stocks or real property held either individually, or through a business, trust, or other related entity; and

(3) The owner's total household annual income does not exceed 24 CFR5, Title 24, U.S. Department of Housing and Urban Development, low-income criteria that apply to the county or metropolitan statistical area where the property is located.

(g) The fund shall be available to:

(1) The current facility owner;

(2) A former facility or landowner for costs incurred during ownership, including completion of work contracted prior to ownership transfer;

(3) A former facility or landowner for costs incurred under a legal indemnification agreement which obligates the former owner to continue corrective action after the facility or land is sold; or

(4) A landowner where a compliant facility was located.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 405.02 Coverage Under Other Insurance.

(a) The fund shall provide excess insurance to reimburse corrective action costs and third-party damage costs not covered within the limits of other valid and collectible insurance. The fund shall provide coverage only after any primary, excess, and umbrella coverage is exhausted.

(b) An owner who will seek reimbursement under RSA 146-D, RSA 146-E or RSA 146-F shall first submit claims to other insurance providers for purposes of a coverage determination before submitting any reimbursement requests to the board. The owner shall submit documentation regarding the findings of the coverage determination prior to, or when submitting an initial reimbursement request to the board. If coverage is denied the insurance shall be deemed not collectible by the owner.

(c) An owner may use other insurance to cover the cost of the fund deductible or for costs that are not eligible under the fund. Reimbursements from the fund shall be adjusted such that the total of payments received from the fund and other insurance does not exceed an owner's total incurred costs.

(d) The board shall not approve reimbursement to an insurer that submits a claim under a subrogation agreement with the owner or through an owner's attempted assignment of interest.

(e) The board shall be subrogated to any claims by an owner for coverage, payments, or reimbursements against any person to whom the owner has a claim.

(f) An owner who received fund reimbursement for a discharge occurrence and subsequently receives payment from an insurer for the same discharge occurrence shall immediately notify the board of such payment. The board shall determine whether the fund is entitled to full or partial repayment and shall notify the owner of such determination.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11
(formerly Odb 405.03)

PART Odb 406 OWNER AND APPLICANT RESPONSIBILITIES

Odb 406.01 Assignment and Subrogation.

(a) An owner's assignment of interest in the fund or right of subrogation claims against the fund shall not be assignable or transferable to a third party. Any attempted assignment or transfer shall not be effective against the fund and shall be considered void.

(b) If an owner's insurance coverage, or the responsibility for corrective action or third-party damages, is in dispute, and in the event of any payment from the fund, the board shall be subrogated to all the owner's rights of recovery therefor against any person or organization including other insurers. The owner shall execute and deliver instruments and do whatever else is necessary for the board to pursue such claims upon request by the board.

(c) The board shall be subrogated to any claims by an owner against any third parties and the board shall be entitled to recover any payments made by a third party to an owner for expenses previously reimbursed by the fund.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 406.02 Liability for Deductible.

(a) The deductible amount described in RSA 146-D:6, II shall be withheld from reimbursement to an owner, but not withheld from an applicant.

(b) If a deductible is not withheld, the board shall bill the owner for the deductible amount through the department and the owner shall pay the amount within 30 days of the billing date.

(c) If the owner is financially unable to pay the entire deductible amount within 30 days of the billing date, the owner shall submit a financial statement and proposed periodic payment amount and payment schedule that is commensurate with the owner's ability to pay.

(d) The board shall approve a request for periodic payments upon determining that it is supported by the owner's financial statement, and shall issue a written notice of its decision.

(e) The deductible amount described in RSA 146-E:6, I and RSA 146-E:6, II shall be withheld from reimbursement to an owner or applicant.

(f) The deductible assessed for each facility discharge shall be based on the total number of facilities owned pursuant to RSA 146-D:6, II, RSA 146-E:6, I, or RSA 146-E:6, II as applicable. Any permanently closed facility at which no contamination is present, no corrective action is required, or no access to the fund will be sought, shall not be included in the total ownership count for purposes of determining the deductible.

(g) A separate deductible shall be applied for each discharge.

(h) The owner of an on-premise-use facility qualified under Odb 405.01(f) shall also qualify for a reduced deductible under RSA 146-E:6, II.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 406.03 Contracts.

(a) An owner may enter into a contract that includes provisions for direct reimbursement to an applicant.

(b) Contracts shall be executed prior to the performance of work by the applicant, and shall not provide for separate reimbursement to individual subcontractors.

(c) The applicant shall agree to waive all claims against the owner for payment of services performed within the limits of a corrective action contract.

(d) For implementation of a remedial action plan, an owner may enter into 2 separate applicant contracts, one contract with a professional engineer or professional geologist for management and oversight of the work, and another contract for construction or cleanup operation services.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 406.04 Right to Enter. An owner shall allow the board or its designee to enter, during reasonable hours, any facility or site location and associated structures, including offices, to inspect any activity and records related to a reimbursement request.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 406.05 Audits and Qualifications.

(a) An owner or applicant shall allow the board or its designee to conduct periodic financial audits of all records related to a reimbursement request, including project cost ledgers, contractor invoices,

subcontractor and vendor invoices, expense receipts, timesheets or timesheet summaries, daily work orders, inventory records and other documents as necessary to substantiate reimbursed costs.

(b) Applicants that are professional engineers, professional geologists or corrective action contractors shall maintain a separate project cost ledger for each fund-eligible project.

(c) To qualify for web-based submittals an applicant shall complete training provided by the department.

(d) To qualify for web-based submittals with expedited payment, an applicant shall:

(1) Complete web-based submittal training provided by the department;

(2) Request qualification for expedited payment, in writing; and

(3) During the 12 months prior to requesting qualification, have submitted 6 or more reimbursement requests, of which 95% or more were complete, and no more than 2 incomplete corrective action reports.

(e) An applicant shall be disqualified from receiving expedited payment for web-based submittals for 12 months following completion of a department audit, if the audit findings are as follows:

(1) More than 5% of web-based submittals or more than 2 corrective action report submittals for the 12-month period prior to the audit were incomplete; or

(2) One or more web-based submittals included costs that are not reimbursable under Odb 407.09 and Odb 407.10.

(f) An applicant disqualified under Odb 406.05(e) seeking re-qualification shall make internal process corrections to prevent future errors and report the corrections made, in writing, prior to expiration of the 12-month disqualification period.

(g) If a periodic financial audit reveals that an owner or applicant received an overpayment for a reimbursement request, the owner or applicant shall be liable to the fund for any overpayment amount.

(h) The board shall, through the department, provide written notification to an applicant of a qualification determination under Odb 406.05(d) or re-qualification under Odb 406.05(f), within 45 days of a request.

(i) The board shall, through the department, provide written notification of disqualification under Odb 406.05(e) within 10 days of completing an audit.

(j) Nothing contained in this chapter shall relieve an owner or applicant from liability under RSA 146-D:7 or RSA 146-G:3.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 407 REIMBURSEMENT OF CORRECTIVE ACTION COSTS

Odb 407.01 Corrective Action Work Scope Requirements.

(a) With the exception of emergency response action performed under Env-Or 605.03, an owner or applicant seeking reimbursement from the fund shall submit a work scope and budget prior to performing corrective action.

(b) If applicable, the owner or applicant shall evaluate the cost-effectiveness of leasing versus purchasing capital equipment considering equipment cost, reliability, efficiency and performance over the estimated duration of the project, and shall include the evaluation data with the work scope and budget.

(c) The board shall, through the department, approve a work scope and budget upon determining the proposed work conforms to the technical criteria of Env-Ws 300, Env-Or 600, We 600, We 700 and We 800, as applicable, and the reimbursable corrective action cost criteria of this part.

(d) The board shall, through the department, issue a work scope approval notice that includes the approved budget and a description of the work pursuant to the technical criteria of Env-Ws 300, Env-Or 600, We 600, We 700 and We 800, as applicable.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.02 Corrective Action Performed by Owner. An owner may perform corrective action with its own employees and equipment subject to other applicable requirements or limitations of this chapter. Reimbursement shall be limited to actual costs based on employee pay rates, cost of benefits and equipment operating costs. Costs associated with direct oversight of employees shall not be reimbursable.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.03 Interim Water Supply. Temporary supplies of potable water provided under authority of RSA 146-G, shall only be available through department contractors.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.04 Connection to Existing Public or Non-Public Water Supply System.

(a) An owner of a private water supply may request reimbursement under RSA 146-G for permanent connection to a public or non-public water supply system available at or near the owner's property boundary.

(b) The owner shall provide a letter from the water supply system owner or operator authorizing the connection when submitting a work scope and budget to the board.

(c) Connections to an existing public or non-public water supply system shall be approved based on conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.

(d) If applicable, the owner shall provide a letter from the water supply system owner or operator stating the work was inspected and meets all connection requirements, when submitting a reimbursement request to the board.

(e) Reimbursable costs shall include the installation of piping, plumbing connections and appurtenances necessary to provide a permanent connection to a public or non-public water supply system, standard one-time connection fees assessed by the water supply system owner, if any, and the costs required to abandon a contaminated supply well.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.05 Replacement of Private Water Supply.

(a) An owner of a private water supply may request reimbursement under RSA 146-G for the installation of a new or replacement groundwater supply well and appurtenances.

(b) A new or replacement private water supply shall be approvable if connection to a public or non-public water supply system is not available, or if the cost of connection would exceed the cost of establishing a viable new or replacement private water supply.

(c) Installations of private groundwater supply wells shall be approved based on conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.

(d) Reimbursable costs shall include site location and development activities, construction of the supply well and pump installation, treatment systems, piping installations, plumbing connections and other necessary appurtenances, startup costs, and the costs required to abandon a contaminated supply well.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.06 Public and Non-Public Water Supply Systems.

(a) An owner of a public or non-public water supply system may request reimbursement under RSA 146-G for a feasibility study, the construction of a distribution system extension, construction of new treatment processes, water supply wells or distribution systems, replacement of a water supply well, or connection to another public or non-public water supply system.

(b) The owner shall conduct a feasibility study and submit a study report prepared by a New Hampshire licensed professional engineer, describing the proposed project in detail and including the following:

- (1) A discussion of the overall necessity of the project with respect to the level of contamination requiring remediation and the ability of the project to provide a long term solution to the problem;
- (2) Data regarding the extent of contamination including the number of properties and residential units or their equivalents affected;
- (3) Data regarding the number of non-contaminated properties and residential units potentially benefiting by the project compared with the number affected by the contamination;
- (4) The estimated reimbursable apportioned share of the construction costs based on the criteria given under Odb 407.07 and a statement of commitment that the owner will contribute the non-reimbursable share;
- (5) A discussion of the alternatives considered, a cost-benefit analysis of the alternatives considered, and the rationale for the selection of the proposed project; and
- (6) A detailed project cost estimate including the total amount of reimbursement ultimately sought from the fund.

(c) The board shall approve the construction of a distribution system extension, construction of new treatment processes, water supply wells or distribution systems, replacement of a water supply well, or connection to another public or non-public water supply system upon determining the following:

- (1) The proposed project conforms to the technical criteria given under Env-Ws 300, as applicable, and the apportioning criteria of Odb 407.07, if applicable;
- (2) New distribution system storage or pumping capacity is needed for the operation of a distribution system extension;

(3) The proposed project costs and hookup fees assessed by another owner are specifically related to removing contamination, in consideration of system capacity and total safe yield of water supply wells lost or gained; and

(4) The proposed project is the most favorable alternative among those considered pursuant to (b) (5) above.

(d) Reimbursable costs shall include feasibility study, feasibility study report preparation, and preliminary design costs, whether or not a project proceeds to construction.

(e) If a project proceeds to construction, reimbursable costs shall include the costs in (d) above, and design, construction, construction oversight, startup, and hookup fee costs.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.07 Apportioned Share of Construction Costs for Public or Non-Public Water Supply System Extensions. Water supply system extension costs reimbursable under RSA 146-G shall be determined by multiplying the percentage of properties serviced that are contaminated by the total project engineering and construction costs attributable to the installation of the distribution mains and appurtenances, to which shall be added 100% of the connection costs and the costs required to abandon the existing water supply for each contaminated property.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.08 Construction Financing. If the balance in the gasoline remediation and elimination of ethers fund plus projected revenues is not sufficient to pay all current uncontested reimbursement claims, current obligations of the department, and estimated future reimbursement claims for known projects, the board shall require that construction projects approved under Odb 407.06 be financed through notes or bonds. In such cases, the fund shall be available for administration costs and for periodic payments of principle and interest due under the note or bond, subject to the other limitations of this chapter.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.09 Reimbursable Corrective Action Costs.

(a) Reimbursable corrective action costs shall be the usual and customary market rates or costs for labor, equipment, capital equipment startup, operation, maintenance and relocation pursuant to (d)(3) below, materials and supplies, goods, services or task, administration of subcontracted services, fuel and insurance cost surcharge, inventory holding time, procurement of materials and supplies, and markup.

(b) The costs for the installation or use of capital equipment shall be reimbursable at the lease rate, or if purchased, at the vendor cost as established by the firm invoiced cost to the owner.

(c) If the capital equipment is purchased, the fund shall retain all rights for any salvage value of the equipment.

(d) When the project is at or near completion the board, in consultation with the owner regarding its intentions for the disposition of purchased capital equipment, shall:

(1) Withhold from reimbursement an amount equal to the actual or calculated salvage value;

(2) Require that the actual salvage value be repaid to the fund if the equipment is repossessed or sold; or

- (3) Permit the use of the equipment for corrective action at another of the owner's facilities or properties.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.10 Reimbursement Limitations for Corrective Action Costs.

- (a) Reimbursement shall not exceed actual invoiced costs paid or incurred less any discounts received.
- (b) The costs for local, state or federal inspection fees, or charges related to obtaining access, shall not be reimbursable.
- (c) Legal costs shall not be reimbursable.
- (d) An owner's administrative, fiduciary management or supervisory costs shall not be reimbursable.
- (e) Interest charges on unpaid invoices or other obligations shall not be reimbursable.
- (f) Civil penalties or double cost recovery under RSA 146-A, RSA 146-C, or RSA 146-G shall not be reimbursable.
- (g) Costs associated with the discovery of a discharge shall not be reimbursable.
- (h) Costs paid by insurance shall not be reimbursable.
- (i) Costs in excess of approved budgets shall not be reimbursable.
- (j) Reimbursable costs shall be limited to corrective action work certified as complete by the department, a New Hampshire licensed professional engineer, or New Hampshire licensed professional geologist, including measurement of quantities, and equipment installed and operational, as applicable.
- (k) No reimbursement shall be approved for any work that does not meet the corrective action performance standard.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 408 REIMBURSEMENT OF THIRD-PARTY DAMAGE COSTS

Odb 408.01 Owner's Duties in the Event of Claim or Suit.

- (a) If a demand for payment of third-party damages is made against an owner who will seek reimbursement under RSA 146-D, RSA 146-E or RSA 146-F, the owner shall forward such demand to the board within 30 days of receipt and shall inform the board of any attempts made to settle the matter before the filing of a writ or petition. The owner shall undertake any actions necessary to obtain a reasonable settlement, including initiating demands against other parties who may be liable to the owner for such damages.
- (b) Upon service of a writ or petition filed in a court of law by a third party the owner shall provide written notice to the board within 30 days of the return date.
- (c) The owner shall provide the board with a copy of all documents related to the third-party action, including those filed with the court, and shall provide timely notice of scheduled hearings, settlement conferences and other actions throughout the proceedings.

(d) The owner shall defend the claim to preserve the right to seek reimbursement for third-party damages. The owner shall cooperate fully with the board in all matters relating to defending the claim.

(e) The owner shall enforce any right to contribution or indemnity against any person or organization who may be liable to the owner or to the third party claimant and shall seek to join such person or organization in any suit brought by a third party against the owner.

(f) The owner shall submit all proposed settlements to the board before entering an agreement with the claimant and before seeking approval from the court.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 408.02 Board Intervention in Third-Party Action.

(a) The board shall not be responsible for the defense of the owner but shall have the right to intervene in the action as a party in interest, and shall have the right to participate in all settlement discussions related to a threatened or filed third-party action.

(b) The owner shall concur in any motions to intervene filed with the reviewing court by the board.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 408.03 Reimbursement of Third-Party Damages.

(a) The owner shall be eligible for reimbursement of third-party damages that are not payable by other insurance, to the extent that the court-ordered judgment or settlement consists of compensable bodily injury costs or property damage costs suffered by the claimant.

(b) If the board determines that a proposed settlement is collusive, is not legally or factually supportable or does not fairly reflect compensable third party damages, it shall so notify the owner and shall deny any subsequent request for reimbursement based upon such settlement.

(c) If an owner proceeds to seek court approval of a settlement to which the board objects under paragraph (b), the board shall notify the court of such objection.

(d) The board shall deny any request for reimbursement of third-party damages to the extent that the settlement or judgment meets the criteria for objection under paragraph (b).

(e) An owner's legal fees and costs, including contingent fees, punitive awards, statutory double damages, fines, and costs imposed by the court, shall not be reimbursable.

(f) All settlements entered into by an owner shall allocate legal fees costs, and double damages fines and costs, if any, separately from amounts payable to the plaintiffs. The owner shall request that the amount awarded for legal fees, costs, double damages, fines and costs, if any, be identified in any jury or court award or verdict.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 408.04 Reimbursement Limitations for Third-Party Damages

(a) No reimbursement shall be made from the fund for third-party damage costs until the amount of the owner's obligation to pay is finally determined either by judgment against the owner after trial on the merits or by written agreement between the owner and the claimant and entered as an order by a court of law.

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(b) Reimbursable third-party damages shall be limited to certain monetary damages as a result of a court-ordered judgment or court approved settlement entered as an order of the court. The board shall not be bound by any obligations imposed upon the owner through settlement or court-approved judgment for injunctive relief or defense and indemnity of future actions by third parties against the claimant.

(c) No reimbursement shall be made from the fund for liability attributable to any party other than the owner. In all multi-party cases, all settlements entered into by the owner shall apportion liability among the pertinent parties. The owner shall request that the court order apportion liability among the pertinent parties in any jury or court award or verdict.

(d) Where an owner's third-party damages are based on a civil judgment, the costs shall not be reimbursable if resulting from a default judgment, or a proceeding otherwise not on the merits or not litigated by the owner to secure a reasonable settlement.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 409 WAIVER OF RULES

Odb 409.01 Requests for Waivers.

(a) With the exception of the Odb 405.01(d) compliance date, an owner or applicant may request that the board waive the application of the rules of this chapter pertaining to fund eligibility and reimbursement, unless such request, if granted, would constitute a waiver of statutory requirements.

(b) Requests for waivers shall be submitted in writing to the board and include the following information:

- (1) A specific reference to the section of the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of the alternatives for which a waiver is being sought, if applicable, with supportive information; and
- (4) A full explanation of how the granting of a waiver would be consistent with the intent of RSA 146-D, RSA 146-E, RSA 146-F or RSA 146-G and this chapter.

(c) The board shall approve a request for a waiver upon finding that the alternatives proposed are at least equivalent to the requirements of this chapter, and are adequate to ensure that the provisions of the statutes are met.

(d) The board shall provide written notice of its decision.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

CHAPTER Odb 500 - REPEALED

Source. #4918, eff 8-22-90; ss by #5114, eff 4-16-91; ss by #5535, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 600 RULES FOR REIMBURSEMENT FROM THE GASOLINE REMEDIATION AND ELIMINATION OF ETHERS FUND UNDER RSA 146-G - REPEALED

Source. #7633, eff 1-29-02; rpld by #8491, eff 11-22-05

APPENDIX

RULE	STATUTE
Odb 101.01 through 105.03	RSA 91-A:4, IV, RSA 91-A:5, IV, RSA 541-A: 16, I(a)
Odb 201.01 – Odb 201.02; Odb 202.01	RSA 146-D:5, I; RSA 146-E:6, I; RSA 146-F:5, I; RSA 146-G:11
Odb 202.01; Odb 203.01 – 203.26	RSA 541-A:16, I (b); RSA 541-A:30-a., I, VI, & VII; RSA 541-A:31; RSA 541-A:32; RSA 541-A:33; RSA 541-A:34; RSA 541-A:35; RSA 541-A:37
Odb 202.01; Odb 204.01 –204.6	RSA 541-A:29
Odb 202.01; Odb 205.01 – 205.05	RSA 541-A:3; RSA 541-A:6; RSA 541-A:11, I-VI
Odb 203.12	RSA 541-A:16, I (b); RSA 541-A:35
Odb 202.01; Odb 206.01 – 206.03	RSA 541-A:4, I; RSA 541-A:11, I-V; RSA 541-A:16, I(b)
Odb 202.01; Odb 207.01	RSA 541-A:11, VII
Odb 202.01; Odb 208.01 – 208.04	RSA 541-A:16, I (d)
Odb 202.01; Odb 208	RSA 146-D:3, III; RSA 146-D:5, I (f); RSA 146-E:3, III; RSA 146-F:3, II; RSA 541-A:16, I(b); RSA 541-A:38
Odb 209.01	RSA 146-D:3, III; RSA 146-D:5, I (f); RSA 146-E:3, III; RSA 146-F:3, II; RSA 541-A:16, I(b); RSA 541-A:38
Odb 401.01 – 402.01	RSA 146-D:1; RSA 146-D:5, I(a) – (d); RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:1; RSA 146-E:6, I – VIII; RSA 146-F:1; RSA 146-F:5, I – IX; RSA 146-G:1, I and II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 403.01- 403.02	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 404.01 – 404.04	RSA 146-D:6, VI; RSA 146-E:6, IV; RSA 146-F:5, IV; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 405.01	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 405.02	RSA 146-D:6, I and Ia; RSA 146-E:6, VII; RSA 146-F:5, VIII
Odb 405.03- 406.01	RSA 146-D:6, I and Ia; RSA 146-E:6, VII; RSA 146-F:5, VIII
Odb 406.02	RSA 146-D:6, III; RSA 146-E:6, III; RSA 146-F:5, III
Odb 407.03 – 407.08	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 407.09 – 407.10	RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 408.01 – 408.04	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 409.01	RSA 146-D:6, III; RSA 146-E:6, II; RSA 146-F:5, II RSA 146-D:6, VI; RSA 146-E:6, IV; RSA 146-F:5, IV; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II