

Oregon Department of Environmental Quality

**Oct. 16-17, 2013**

Oregon Environmental Quality Commission Meeting

Rulemaking Action Item: #XX

**Increase water quality permit fees to address program costs**

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| **DEQ recommendation to the EQC** |

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed PERMANENT rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

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| **Overview** |

Short summary

DEQ proposes increasing most water quality permit fees by 2.9 percent.

Brief history

In 2002, DEQ convened the Blue Ribbon Committee on Wastewater Permitting to recommend improvements to DEQ’s water quality permit program. The committee included industry, environmental and local government representatives. In 2004, the committee published a report containing a variety of recommendations, including increasing fee revenue by no more than 3 percent each year to address increasing program costs. The annual fee increase recommendation was adopted into law in 2005. To address increasing program costs, DEQ implemented fee increases in 2007, 2008, 2010, 2011 and 2012 and proposes this 2013 permit fee increase of 2.9 percent.

Regulated parties

Regulated parties include individuals, private businesses and government agencies.

Permit fees would increase for most National Pollutant Discharge Elimination System, Water Pollution Control Facility, and WPCF-Onsite septic system permits. The fee increase would not affect:

* + - * Suction dredge (700-PM) permits. These fees are set in statute and can only be changed by the Oregon Legislature.
* Graywater (2401 and 2402) permits in an effort to encourage graywater reuse permitting.
* Small offstream mining operations (WPCF 600). There are no application fees or annual fees.

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| **Statement of need** |

What problem is DEQ trying to solve?

Based on a comparison of the 2013-15 Governor’s Balanced Budget and the 2011-13 Legislatively Adopted Budget, the estimated water quality program costs would increase 7.1 percent per full-time employee each fiscal year during the 2013-15 biennium.

DEQ analyzed expected cost increases per full-time employee for fiscal year 2014 relative to the costs for fiscal year 2013 to establish the amount of the proposed increase for fiscal year 2014 (July 1, 2013-June 30, 2014). The projected increases in personnel services can be attributed to projected increasing costs of salaries and fringe benefits. Cost increases are also projected for services and supplies, such as rent and utilities. The combined effects of the budget categories (see table below) represent a total increase of 7.1 percent in projected costs for fiscal year 2014.

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| **Budget Category** | **Percent of Total Budget**  **Fiscal Year 2014** | **Projected Cost Increase Fiscal Year 2014** |
| Personnel Services (salaries, benefits) | 72.24% | 7.96% |
| Services and Supplies (rent, utilities) | 16.65% | 8.42% |
| Contract | 1.13% | 3.01% |
| Special Payment | 0.50% | 8.50% |
| Indirect Services (management, business services) | 9.48% | -0.12% |
| Total | 100% | 7.10% |

How would the proposed rule solve the problem?

The proposed rule solves only part of the problem of increased program costs. Oregon Revised Statute 468B.051 authorizes the Environmental Quality Commission to raise fees annually. The annual amount may not exceed the anticipated increase in the cost of administering the permit program or 3 percent, whichever is lower. The estimated program cost increase of 7.1 percent for fiscal year 2014 is greater than the maximum 3 percent allowed by law.

Applying the three percent fee increase in the 2013-15 Governor’s Balanced Budget would result in permit fees supporting 62 percent of the water quality permit program budget. This proposal recommends the lower 2.9 percent increase to meet the Blue Ribbon Committee recommendation in its 2004 report that funding for the permit program budget be 60 percent permit fees and 40 percent public funds (federal, general). This is consistent with how the 2012 fee increase was calculated.

How will DEQ know the problem has been solved?

The proposed 2.9 percent fee increase represents a partial solution to increased water quality program costs.

The 3 percent fee increase limit in law may not keep pace with program cost increases. This is a statutory rather than an administrative rule issue that is outside the scope of this proposal.

An additional solution would be to reduce program costs, primarily through reducing personnel services costs (e.g., salaries, benefits) and indirect services costs (e.g., management, business services), as these categories are approximately 80 percent of the total program budget. Reducing program costs is outside of the scope of this proposal.

Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rules’ substantive goals while reducing negative economic impact of the rule on business.

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| **Federal relationship** |

*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."*

Relationship to federal requirements

There are no applicable federal requirements. The proposal does not alter any permit requirements other than the fee amounts for:

* Oregon’s National Pollutant Discharge Elimination System and Water Pollution Control Facility permitting programs under OAR 340-018-0030(5)(c)
* Issuance of On-site Sewer Permit under OAR 340-018-0030(5)(d)
* Issuance of NPDES and WPCF Permits that regulate wastewater discharges from industrial and municipal sources.

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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Water Quality Surface Water Management

Chapter 340 action

Recommendation Division Rule Title SIP/Land use\*

amend 45 75 Permit Fee Schedule Land use

amend 71 140 Onsite System Fees Land use

\* Land use – DEQ State Agency Coordination Program considers this rule, program or activity a land use program.

Statutory authority

ORS 454.625, 468.020, 468.065

Statute implemented

ORS 454.745, 454.755, 468.065, 468B.035, 468B.050, 468B.051 and 468B.195

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.leg.state.or.us/ors/183.html)

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| **Document title** | **Document location** |
| Blue Ribbon Committee Report on Key Enhancements to the Oregon Wastewater Permitting Program – 2004 | http://www.deq.state.or.us/wq/pubs/  reports/blueribbonrpt.pdf |
| Cost factors approved through the state’s budget process | DEQ Headquarters |
| Compensation plan changes | DEQ Headquarters |
| Fee increase calculations | DEQ Headquarters |
| DEQ 2011-13 Legislatively Approved Budget | DEQ Headquarters |
| DEQ 2013-15 Governor’s Balanced Budget | DEQ Headquarters |
| DEQ’s water quality permit database | DEQ Headquarters |
| Application and annual fee invoice records | DEQ Headquarters |
| Oregon Revised Statutes 468B.051 | http://www.leg.state.or.us/ors/468b.html |

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| Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.leg.state.or.us/ors/183.html) |

Statement of Cost of Compliance

1. Impacts on general public

Though DEQ cannot determine the extent to which the proposed fees will affect each consumer, DEQ expects some impact on the public, primarily through an increase to the costs of goods and services offered by permit holders.

1. Cost of compliance on small businesses (50 or fewer employees). [ORS 183.336](http://www.leg.state.or.us/ors/183.html)

For this section, DEQ used Oregon Employment Department information to calculate the impact of the proposed fee increases on small businesses. In 2006, the Oregon Employment Department found that 96 percent of Oregon businesses were small businesses. Although DEQ cannot determine the extent to which the 2.9 percent fee increases will affect each permit holder, DEQ expects that the fee increase will have an impact on small businesses. Fiscal impact to a small business depends on the type of permit issued, but application fee increases would range from $6 to $1,469 and annual fee increases would range from $2 to $2,724.

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | DEQ estimates 3,000 wastewater permit holders are small businesses, and would be affected by the 2.9 percent fee increase.  The types of small businesses/industries holding wastewater permits include, but are not limited to: food processors, mining operations, dairies, fish hatcheries, smelting/refining operations, timber processing, wood products manufacturing, retail operations, seafood processors, gravel mining, wineries, seasonal fresh pack operations, petroleum hydrocarbon clean-up operations, and vehicle and equipment wash water operations.  The types of small businesses/industries holding WPCF Onsite septic system permits include, but are not limited to: machine shops, offices, retail stores, recreation vehicle parks, mobile home parks, private camps, golf courses, churches, resorts, restaurants, gas stations, markets, taverns and industry. |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | The proposed rules do not require additional administrative activities. |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | The proposed rules do not require additional equipment or administration requirements. |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | The proposal to allow DEQ to seek an up-to-three percent annual fee increase to account for program cost increases originated with the Blue Ribbon Committee. The committee represents the wastewater community as a whole, and includes small businesses. DEQ met with the committee on May 23, 2013, provided a summary of the proposed rule, and gathered input. |

3. Impact on large businesses (all businesses that are not small businesses under #2 above)

DEQ estimates 150 wastewater permit holders are large businesses and would be affected by the 2.9 percent fee increase. DEQ anticipates that for these businesses, the fee increase is small compared to the overall yearly operating costs of permit holders.

4. Impact on other government entities other than DEQ

1. Local governments

For this section, a local government is defined as 1) a group of local government functions within a jurisdiction that each hold water quality permits (e.g., City of Portland – including Portland School District and Port of Portland – is counted as one local government); or 2) a single organization within a jurisdiction, if only one local government function holds a permit (e.g., includes but is not limited to water districts, cities, towns, ports, sanitary districts, library districts, counties and school districts). This rulemaking will increase water quality permit fees by 2.9 percent for 361 local governments that hold approximately 653 permits. Fiscal impact to local governments depends on the type of permit issued, but application fee increases would range from $6 to $1,469 and annual fee increases would range from $2 to $2,724.

1. State agencies

Twenty-one Oregon state agencies hold about 137 water quality permits. Fiscal impact to state agencies depends on the type of permit issued, but application fee increases would range from $6 to $1,469 and annual fee increases would range from $2 to $2,724.

5. Impact on DEQ

The proposed 2.9 percent fee increase will generate approximately $145,000 during fiscal year 2014 to cover increased water quality program costs.

Advisory committee

DEQ met with the Blue Ribbon Committee (advisory committee) and considered the committee’s recommendations on this fiscal and economic impact statement.

In compliance with [ORS 183.333](http://www.leg.state.or.us/ors/183.html), DEQ asked for the committee’s recommendations on:

* Whether the proposed rules would have a fiscal impact,
* The extent of the impact, and
* Whether the proposed rules would have a significant impact on small businesses and compliance with [ORS 183.540](http://www.leg.state.or.us/ors/183.html).

Housing cost

To comply with [ORS 183.534](http://www.leg.state.or.us/ors/183.html), DEQ determined the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached single-family dwelling on that parcel.

A builder of a 6,000-square-foot parcel would be required to pay $243, which is a $7 increase from the existing fee of $236, for a construction stormwater permit, if the parcel is part of a common plan of development disturbing one or more acres. A builder of a 6,000-square-foot parcel that is not part of a common plan of development disturbing one or more acres would not be required to obtain a construction stormwater permit, and consequently would not be required to pay the permit fee. While the fee would not likely have significant impact on new housing projects, the fee could affect projects by altering construction costs that are agreed upon between a builder and the buyer. DEQ estimates that home builders would likely pass the permit cost to home buyers.

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| Land use |

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

[ORS 197.180](http://www.leg.state.or.us/ors/197.html), [OAR 660-030](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.html)

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

* Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

**Goal Title**

5 Open Spaces, Scenic and Historic Areas, and Natural Resources

6 Air, Water and Land Resources Quality

11 Public Facilities and Services

16 Estuarial resources

19 Ocean Resources

* [OAR 340-018-0030](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
  + Comply with statewide land-use goals, and
  + Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* DEQ’s mandate to protect public health and safety and the environment.
* Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
* Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the proposed rules identified under the ‘Rules affected, authorities, supporting documents’ section above **affect:**

* Oregon’s National Pollutant Discharge Elimination System and Water Pollution Control Facility permitting programs (OAR 340-018-0030(5)(c)
* Issuance of On-site Sewer Permit under OAR 340-018-0030(5)(d)
* Issuance of NPDES and WPCF Permits is an existing activity identified in the DEQ State Agency Coordination Program as a land-use program.

DEQ’s statewide goal and local plan compatibility procedures adequately cover the proposed rules. Oregon Administrative Rule 340-018-0050(2)(a) ensures compatibility with acknowledged comprehensive plans through submittal of a Land Use Compatibility Statement.

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| Stakeholder and public involvement |

Advisory committee

DEQ convened the Blue Ribbon Committee (advisory committee) on May 23, 2013. The 16-member committee includes industry, environmental and local government representatives. The committee recommended that DEQ continue with its proposal. Following the meeting, the committee reviewed the fiscal impact statement, specifically impact on small businesses.

 EQC prior involvement

DEQ shared information about this rulemaking with the Oregon Environmental Quality Commission in the Director's Dialogue Aug. 21, 2013.

Public notice

The Aug. 1, 2013 *Oregon Bulletin* published the Notice of Proposed Rulemaking with Hearing for this proposed rulemaking.

On July 22, 2013 DEQ:

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm>.
* E-mailed notice to:
* Interested parties through GovDelivery.
* Key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html). Key legislators included:
  + Senator Jackie Dingfelder, Chair, Senate Committee on Environment and Natural Resources
  + Representative Jules Bailey, Chair, House Committee on Energy and Environment
* Members of the advisory committee.
* Mailed the notice by U.S. Postal Service to 3,613 interested parties.

Public hearings and comment

DEQ held one public hearing. The comment period closed on Aug. 23, 2013 at 5 p.m. DEQ received 10 public comments. The Summary of comments and DEQ responses section below addresses each public comment. The Commenter section below lists all people who provided comments on this proposal.

Presiding Officers’ Record

The presiding officer convened the hearing listed in the table below; there were no attendees.

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| Summary of comments and DEQ responses |

For public comments received by the close of the public comment period, the following organizes comments into two categories with cross references to the commenter number. DEQ’s response follows the summary. Original comments are on file with DEQ.

1. **Comment** The proposed fees, during a downturn in the economy and combined with the cost of doing business, represent a hardship and are opposed. Instead of increasing fees, DEQ should look towards efficiencies within existing programs or cut/reduce existing programs and services to reduce costs.

DEQ received seven comments in this category from commenters 1-7 listed in the *Commenter* section below.

**Response** DEQ acknowledges the fee increase may represent a hardship to businesses, especially small businesses. DEQ also agrees that increasing efficiency is important. Some examples of recent program efficiencies include: an electronic system for reviewing monthly monitoring reports for major facilities and working with local government to reduce duplicative construction stormwater permitting. DEQ is also working towards electronic reporting of permit data and will continue to look for and prioritize program efficiencies. Even with these efficiencies, program costs are predicted to increase 7.1 percent in fiscal year 2014.

2 Comment The proposed 2.9 percent increase in permit fees is supported. (Commenters noted reservations about supporting the proposal due to DEQ performance related to Blue Ribbon Committee metrics. Performance metrics are outside of the scope of this rulemaking.)

DEQ received three comments in this category from commenters 8-10 listed in the *Commenter* section below.

**Response** Not applicable.

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| Commenters |

Comments received by close of public comment period

The table below lists 10 people and organizations that submitted comments on the proposed rules by the deadline for submitting public comment. Original comments are on file with DEQ.

Commenters 1-7 submitted comments under category one in the *Summary of comments and DEQ responses* section above.

1. **Commenter** Arnold Meier

AffiliationCPA

1. **Commenter** Robert Van Creveld

AffiliationEdgewater NW

1. **Commenter** Carl Patenode

AffiliationCity of Drain

1. **Commenter** Thomas Harmon

Affiliation(Not Provided)

1. **Commenter** John Orueta

AffiliationAna Reservoir RV Park LLC

1. **Commenter** Michael Maas

AffiliationSiskiyou Field Institute

1. **Commenter** Don Stonebrink

Affiliation(Not Provided)

Commenters 8-10 submitted comments under category two in the *Summary of comments and DEQ responses* section above.

1. **Commenter** Janet Gillaspie

AffiliationOregon Association of Clean Water Agencies

1. **Commenter** Tracy Rutten

AffiliationLeague of Oregon Cities

1. **Commenter** Mark Landauer

AffiliationSpecial Districts Association of Oregon

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| Implementation |

Notification

The proposed rules would become effective on Nov. 1, 2013. DEQ would notify:

* Permit holders through invoices
* Advisory committee members
* Agents who administer permits on DEQ’s behalf
* Interested parties through GovDelivery (same list as the public notice period)
* Water Quality employees

Systems

* Website – All applicable information (tables, forms, fact sheets) would be updated.
* Database – All applicable fees would be updated.

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| Five-year review |

Requirement ORS 183.405

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption

The following APA exemptions from the five-year rule review apply to all of the proposed rules:

Amendments or repeal of a rule. ORS 183.405 (4)