



# Oregon Department of Environmental Quality

**July 15, 2013**

## Notice of Proposed Rulemaking

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

## 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.

## 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.

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 requests public comment on whether to consider other options for achieving the rules' substantive goals while reducing negative economic impact of the rule on business.

## 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.

## Rules affected, authorities, supporting documents

Lead division

Water Quality

Program or activity

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)

Document title	Document location
Blue Ribbon Committee Report on Key Enhancements to the Oregon Wastewater Permitting Program – 2004	<a href="http://www.deq.state.or.us/wq/pubs/reports/blueribbonrpt.pdf">http://www.deq.state.or.us/wq/pubs/reports/blueribbonrpt.pdf</a>
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	<a href="http://www.leg.state.or.us/ors/468b.html">http://www.leg.state.or.us/ors/468b.html</a>

## 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.

2. Cost of compliance on small businesses (50 or fewer employees). [ORS 183.336](#)

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.

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

a. 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.

b. 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](#), 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](#).

### Housing cost

To comply with [ORS 183.534](#), 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.



## 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, OAR 660-030

### 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
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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](#) 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](#).
- 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.

## Stakeholder and public involvement

### Advisory committee

DEQ convened the Blue Ribbon 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 will share 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* will publish the Notice of Proposed Rulemaking with Hearing for this proposed rulemaking. DEQ also:

- Posted notice on DEQ's webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on July 22, 2013.
- E-mailed notice to:
  - Interested parties through GovDelivery on July 22, 2013.
  - Key legislators required under ORS 183.335 on July 22, 2013. 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 on July 22, 2013.
- Mailed the notice by U.S. Postal Service to 3,613 interested parties on July 22, 2013.

## Public hearings

DEQ plans to hold one public hearing. The table below includes information about how to participate in the public hearings.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](#), the staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](#) and respond to any questions about the rulemaking.

DEQ will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. DEQ will consider all oral and written comments received at the hearings listed below before finalizing the proposed rules. All comments will be summarized and DEQ will respond to comments on the Oregon Environmental Quality Commission staff report.

	Hearing 1	Hearing 2	Hearing 3
Date	Aug. 20, 2013		
Time	6 p.m.		
Address line 1	811 SW Sixth Ave.		
Address line 2	Portland, OR 97204		
City	Portland		
Presiding officer	DEQ staff		
Staff presenter	Chris Clipper, Program Analyst, Water Quality		
iLinc conference number	none		
Session number	none		
Participant code	none		

## Close of public comment period

The comment period will close on Friday, Aug. 23, 2013 at 5 p.m.

DEQ will prepare a response to all comments received during the public hearing and comment period and may modify the proposed rules. DEQ plans to recommend that the Oregon Environmental Quality Commission adopt the rules at its Oct. 16-17, 2013 meeting. DEQ will notify persons of the time and place for final commission action if they submit comments during the hearing or comment period or request to be placed on DEQ's mailing list for this rulemaking. If proposed rules are adopted, fees would become effective Nov. 1, 2013.