

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 is proposing the following Water Quality program changes:

o Permit fee increase of 2.9 percent for most permit fees

Brief history

In 2002, DEQ convened the Blue Ribbon Committee on Wastewater Permitting (comprised of industry, environmental and local government representatives) to recommend improvements to DEQ's water quality permit program. 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, and DEQ implemented fee increases in 2007, 2008, 2010, 2011 and 2012. The permit fee increase of 2.9 percent is proposed in an effort to address increasing program costs.

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. Suction dredge (700-PM) permits would not be affected by the fee increase, since those permit fees are set in statute and can only be changed by the legislature. Graywater (2401 and 2402) permits would also not be affected by the fee increase in an effort to encourage graywater reuse permitting. There are no application fees or annual fees for small offstream mining operations (WPCF 600). These operations would not be affected by the fee increase.

Statement of need

What problem is DEQ trying to solve?

Program costs are estimated to increase 7.1 percent per full-time employee per fiscal year in the 2013-2015 biennium. This projected increase is based on a comparison of the 2013-2015 Governor's Balanced Budget and the 2011-2013 Legislatively Adopted Budget.

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. State statute authorizes the environmental quality commission to raise fees annually in an amount not to exceed the anticipated increase in the cost of administering the permit program or 3 percent, whichever is lower (Oregon Revised Statute 468B.051). The estimated program cost increase of 7.1 percent for fiscal year 2014 is greater than the maximum 3 percent allowed by law.

Also, the Blue Ribbon Committee recommended in its 2004 report permit fees comprise 60 percent of the total permit program budget, with public funds (federal, general) accounting for 40 percent. A 3 percent fee increase in the 2013-2015 Governor's Balanced Budget would result in permit fees supporting 62 percent of the water quality permit program budget. A permit fee increase based on a 60:40 percent funding split is 2.9 percent. DEQ changed its permit fee increase proposal from 3.0 percent to 2.9 percent to meet the Blue Ribbon Committee recommendation.

How will DEQ know the problem has been solved?

As mentioned above, the proposed 2.9 percent fee increase represents a partial solution to the problem of increased program costs.

The up-to-3 percent fee increase may not keep pace with program cost increases. This is a statutory issue that is outside the scope of this proposal.

An additional solution to increased program costs 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 accounts for 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 rule's substantive goals while reducing negative economic impact of the rule on business.

Statement of Cost of Compliance

1. Impacts on general public

Though DEQ cannot determine the extent to which the proposed fees will impact 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 impact each permit holder, DEQ expects that the fee increase will have impact on small businesses. Fiscal impact to a small business is dependent upon 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 impacted 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-3 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 impacted 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 is dependent upon 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 is dependent upon 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

As previously stated, 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 <u>ORS 183.534</u>, 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 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 \$243 permit fee. While the fee would not likely have significant impact on new housing projects, the fee could impact projects by affecting 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.