

Oregon Department of Environmental Quality

**July 15, 2013**

Notice of Proposed Rulemaking

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

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|  **Overview** |

Short summary

DEQ is proposing the following Water Quality program changes:

* Permit fee increase of 2.9 percent for most permit fees
* New major modification fee ($5,106) for underground injection control permits

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 three 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.

A major modification for fee purposes involve~~s~~ an increase in effluent limitations or any other change that involves significant analysis by DEQ.

DEQ staff is required to complete this analysis ~~a review~~ when permittees request a major modification to their permit. DEQ examines the rationale for the proposed modification to determine {blank} is being met, completes a public notice with opportunity for public participation, and … Examples of a major modification for underground injection control permits include a reduction in annual sample parameters or changes in closure protocol. Currently, a major modification fee does not exist for underground injection control permits. DEQ is unable to recover costs associated with the review of these major modification requests. The major modification fee is proposed in an effort to recover costs associated with future major modification requests for this permit types.

Regulated parties

Permit fee increase of 2.9 percent for most permit fees

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 placer mining operations (WPCF 600).

Major modification fee for underground injection control permits

Regulated parties include private businesses, state and local government agencies, and service districts.

The fee would be charged for modifications initiated by the permittee.  Historically, when DEQ has initiated a major permit modification, no fee has been charged.

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|  **Statement of need** |

1. Permit fee increase of 2.9 percent for most permit fees

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.

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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. 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 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 this category accounts for approximately 80 percent of the total program budget. Reducing program costs is outside of the scope of this proposal.

1. Major modification fees for underground injection control permits

What problem is DEQ trying to solve?

A major modification fee does not exist for underground injection control permits. DEQ is unable to recover costs associated with major modifications for these permit types.

How would the proposed rule solve the problem?

DEQ is proposing a major modification fee for this permit type equivalent to 50.1 percent of new permit application fees. Using this methodology will align the proposed major modification fee with existing major modification fees of individual domestic wastewater discharge permits. Through the proposed fees, DEQ would be able to recover costs associated with major modifications for underground injection control permits. DEQ is proposing a major modification fee of $5,106.

How will DEQ know the problem has been solved?

Not applicable.

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.

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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 affects fees for 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 and OAR 340-018-0030(5)(d) Issuance of NPDES and WPCF Permits), which regulate wastewater discharges from industrial and municipal sources. The proposal does not alter any permit requirements other than the fee amounts.

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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 2011-2013 Legislatively Approved Budget | DEQ Headquarters |
| DEQ 2013-2015 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 |
| Analysis of domestic and industrial individual permit fees | DEQ Headquarters |

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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 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.

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 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.

The proposed major modification fee for underground injection control permits would impact small businesses that pursue a major permit modification. Currently, a fee does not exist. The proposed fee is $5,106.

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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 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. DEQ estimates 10 of 62 expected underground injection control permit holders are small businesses and would be subject to the proposed major modification fee of $5,106. The estimate of 10 small businesses is based upon plans for future permit issuance. Currently, no small businesses have been issued an underground injection control permit. The types of small businesses/industries holding underground injection control permits include, but are not limited to: nonresidential building operators, car washes and shopping centers.  |
| 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. The Blue Ribbon Committee represents underground injection control stakeholders. DEQ conducted informal outreach prior to the start of public comment period to current and future underground injection control permit holders, which include small businesses, regarding the proposed major modification fee.  |

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.

DEQ estimates 18 of 62 expected underground injection control permit holders are large businesses and would be subject to the proposed major modification fee of $5,106. The estimate of 18 large businesses is based upon plans for future permit issuance. Currently, no large businesses have been issued an underground injection control permit.

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 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.

DEQ estimates 30 of 62 expected underground injection control permit holders are local governments and would be subject to the proposed major modification fee ($5,106). The estimate of 30 local governments is based upon plans for future permit issuance. Currently, four local governments have been issued a permit.

1. 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.

DEQ estimates 3 of 62 underground injection control permits will be issued to state government agencies. These state agencies will be subject to the proposed major modification fee ($5,106). The estimate of three state agency permits is based upon plans for future permit issuance. Currently, no state agencies have been issued an underground injection control permit.

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.

Requests by the permittee for major modifications are dependent upon many factors including available resources to the permittees and future changes/revisions to the permit. Due to uncertainty with the number of future major modification requests, DEQ cannot accurately predict additional revenue generated from the proposed major modification fee. Currently 61 underground injection control permits have been issued or are expected to be issued in the future. If each of these permits underwent one major modification requested by the permittee, additional revenue of $311,466 would be generated.

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. DEQ discussed the proposed permit fee increase of 2.9 percent for most permit feesand major modification fees for municipal stormwater phase one and underground injection control permits.

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 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.

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|  Fees  |

See attachment.

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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[🞂](http://deq05/intranet/working/guidance/stateAgencyCoordinationProgram10-MSD-009.pdf) 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 and OAR 340-018-0030(5)(d) Issuance of NPDES and WPCF Permits), which is an existing rule, program or activity that is considered a land-use program in the DEQ State Agency Coordination 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 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. The committee reviewed the fiscal impact statement, specifically impact on small businesses.

 EQC prior involvement

DEQ will share information about this rulemaking with the EQC 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:
* Approximately #### interested parties through GovDelivery on July 22, 2013.
* #### stakeholders on the [LIST OTHER MAILING LIST].
* Key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html) on July 22, 2013. Key legislators included:
	+ Name, Title, Committee
	+ Name, Title, Committee
	+ Name, Title, Committee
* Members of the advisory committee on July 22, 2013.
* Mailed the notice by U.S. Postal Service to ## interested parties on July 22, 2013.

Public hearings

DEQ plans to hold ## public hearing(s). The table(s) below includes information about how to participate in the public hearings.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), the staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html) 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 Environmental Quality Commission staff report.

Delete the unused hearings tables below. After the team has finalized the information in the table(s), copy them into STAFF.RPT-6.0~. The staff report includes directions on ungrouping hidden rows and deleting rows specific to the notice.

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Close of public comment period

The comment period will close on Aug. 23, 2013 at 5:00 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 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 the proposed rules are adopted, fees would become effective Nov. 1, 2013.