

Oregon Department of Environmental Quality

**ENTER EQC DATE**

Oregon Environmental Quality Commission Meeting

Rulemaking Action Item: #

**Updates to OAR Chapter 340, Divisions 011, 012 and 200**

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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. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040.

What DEQ says in the staff report is important. This report becomes part of the administrative history of the rule and the court may look at it for guidance when deciding how to interpret an ambiguous rule section. Be thorough and accurate when discussing the potential scope of the rule.

Before formal review:

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Insert the following sections from NOTICE.AboutTheProposal-4.0~ here.

* Overview – tell story, modify as needed
* Brief history – tell story, modify as needed
* Statement of need – do not modify
* Federal relationships – do not modify
* Rules affected, authorities, supporting documents – modify as needed
* Statement of fiscal and economic impact – do not modify
* Fees – modify with caution
* Land use – do not modify

**Change tense from future to present or past as needed.**

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| **Overview** |

Short summary

DEQ proposes the following changes to chapter 340 of the Oregon Administrative Rules.

* Division 011 amendments would:
  + align with the Oregon Attorney General Model Rules under OAR 340-003-0501 through 0690. The Model Rules that apply to Environmental Quality Commission proceedings became effective Jan. 31, 2012.
  + address procedures for filing and service of documents in contested cases and other general contested case proceedings.
  + establish a new fee for onsite septic system program public records requests. This would allow DEQ to recover the costs of fulfilling such requests.
  + repeal OAR 340-011-0605 that became obsolete in 2007 with the passage of Measure 49. Measure 49 substantially reduced the impact of Measure 37 and the required director’s review.
  + make minor housekeeping changes.
* Division 012 amendments would implement 2009 Oregon legislation that increased DEQ’s civil penalty statutory maximums, many last updated in 1973. To implement the enhanced penalty authority, DEQ must amend Division 012 rules. Other proposed changes include aligning violation classification and magnitudes with DEQ program priorities, providing greater mitigating credit for correcting violations, and housekeeping that includes eliminating duplicative text.
* Division 200 amendments would update the Oregon Clean Air Act State Implementation Plan. Section 110 of the Clean Air Act, 42 U.S.C. §7410, requires state and local air pollution control agencies to adopt federally approved control strategies to minimize air pollution. The resulting body of regulations is a State Implementation Plan or “SIP”. By incorporating updated civil penalties and violations, these proposed rules would be a revision to Oregon’s SIP. DEQ must submit rule changes to EPA and EPA must approve the rules as meeting the requirements of the Clean Air Act. After the Oregon Environmental Quality Commission amends the proposed rule, DEQ will submit SIP revisions to EPA for approval.

Key Proposed Amendments

If approved, this proposal would:

**Civil penalty matrices (OAR 340-012-0140)**

* Increase the top base penalty in the current $8,000 penalty matrix to $12,000
* Increase the top base penalty in the current $6,000 penalty matrix to $8,000
* Increase the top base penalty in the current $2,500 penalty matrix to $3,000
* No changes to the current $1,000 penalty matrix

**Change to factors in the civil penalty formula (OAR 340-012-0145) by:**

* Increasing credit for the “C” factor to apply mitigating credit for a violator’s efforts to correct violations
* Expanding the use of the “M” factor to assign a broader range of penalty aggravation when considering the mental state of the violator

**Increase additional or alternate penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage (OAR 340-012-0155)**

Base penalties in this category would increase from $50,000 to $100,000 to a new range of $100,000 to $200,000 depending on whether violations are caused intentionally, recklessly or flagrantly.

**Increase administrative penalty maximums to $100,000 for certain spill violations of oil or hazardous materials**

Penalties for intentionally or negligently spilling oil or hazardous materials into waters of the state, or intentionally or negligently failing to clean up such spills would increase from a maximum of $20,000 to a maximum of $100,000. In addition, a final penalty would be determined according to a new formula and additional factors not in the current rule.

**Establish a base fee for onsite septic system program public records requests**

Currently DEQ may only charge for public records requests if they require more than 15 minutes of staff time. DEQ estimates that public records requests in the onsite septic system program require 50 to 75 hours of staff time per month. Few requests exceed the 15-minute threshold; therefore, DEQ receives little revenue to cover the costs for this work. This amendment would allow DEQ to recover the costs for fulfilling these public records requests.

Regulated parties

The proposed changes do not impose any new requirements upon regulated entities.

Division 011 includes rules that supplement the Oregon Attorney General Model Rule for administrative procedures. Division 011 applies to any person involved in a contested case proceeding in front of the Environmental Quality Commission. The rules outline the contested case hearings processes. Division 012 outlines the processes DEQ must follow in assessing penalties or issuing other formal enforcement actions. These rules do not contain any requirements for regulated entities.

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| **Statement of need** |

1. **Division 011**

What problem is DEQ trying to solve?

Division 011 no longer aligns with the Oregon Attorney General Model Rules. The affected rules address procedures for filing and service of documents for contested cases and other general contested case proceedings. OAR 340-011-0009 incorporates the Model Rules.

Help to provide for a sustainable onsite septic system program.

How would the proposed rule solve the problem?

Aligning Division 011 to the Oregon Attorney General Model Rules would eliminate confusion and provide clear direction to DEQ staff and the public for filing and service of documents and other contested case proceedings.

DEQ would be able to recover the costs for fulfilling public records requests in the onsite septic system program.

How will DEQ know the problem has been solved?

DEQ is required to use the Attorney General Model rules, and the Division 011 changes adopt those required rules. Adopting the changes should reduce possible confusion over having two sets of rules with different requirements.

The onsite septic system program tracks the time spent to fulfill public records requests and the revenue received for the various services that are provided. DEQ will be able to track the time and cost of the work and compare it to the revenue received from the new fee to determine if the costs are being covered.

1. **Division 012**

What problem is DEQ trying to solve?

Division 012 does not reflect DEQ’s current civil penalty statutory maximums.

How would the proposed rule solve the problem?

The rules would implement the 2009 Senate Bill that increased civil penalty maximums.

How will DEQ know the problem has been solved?

Depending on the factual circumstances of each case, DEQ will use the new penalty rules that are likely to increase some penalties consistent with the new statutory maximums.

Request for other options

During the public comment period, DEQ will request 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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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Office of the Director Office of Compliance and Enforcement

OAR Chapter 340 action – Division 011, 012 and 200

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| Amend | 340-011-0005, 340-011-0010, 340-011-0024, 340-011-0029,  340-011-0046, 340-011-0053, 340-011-0061, 340-011-0310,  340-011-0330, 340-011-0340, 340-011-0360, 340-011-0370,  340-011-0380, 340-011-0390, 340-011-0500, 340-011-0510,  340-011-0515, 340-011-0520, 340-011-0525, 340-011-0530,  340-011-0535, 340-011-0540, 340-011-0545, 340-011-0550,  340-011-0555, 340-011-0565, 340-011-0570, 340-011-0573,  340-011-0575, 340-011-0580, 340-011-0585, 340-012-0026,  340-012-0027, 340-012-0028, 340-012-0030, 340-012-0038,  340-012-0041, 340-012-0045, 340-012-0053, 340-012-0054,  340-012-0055, 340-012-0060, 340-012-0065, 340-012-0066,  340-012-0067, 340-012-0068, 340-012-0071, 340-012-0072,  340-012-0073, 340-012-0074, 340-012-0079, 340-012-0081,  340-012-0082, 340-012-0083, 340-012-0097, 340-012-0130,  340-012-0135, 340-012-0140, 340-012-0145, 340-012-0150,  340-012-0155, 340-012-0160, 340-012-0162, 340-012-0165,  340-012-0170 and 340-200-0040 |

Repeal 340-011-0605

Statutory authority

ORS 183.335, 183.341, 183.452, 192.410-505, 195.305, 454, 454.050, 454.625, 459.045, 459.376, 459.995, 459A.585, 459A.590, 465.280, 465.400-410, 466, 466.070-080, 466.625, 466.720, 466.746, 466.882, 466.858-994, 467, 467.030, 468.020, 468.065, 468.090-140, 468.996, 468A , 468A.025, 468A.045, 468A.327, 468B, 468B.015, 468B.035, 468B.350, and 783.620-992

Statutes implemented

ORS 183.025, 183.090, 183.335, 183.341, 183.390, 183.410, 183,413, 183.415, 183.425, 183.440, 183.450, 183.452, 183.457, 183.460, 183.464, 183.470, 183.480, 183.482, 183.484, 183.745, 183.090, 192.410-440, 192.501, 192.502, 197.352, 454, 454.635, 454.645, 459, 459.205, 459.376, 459.705-790, 459.992, 459.995, 459A.580-585, 459A.590, 459A.665, 459A.660, 459A.685, 465, 465.021, 465.210, 465.900, 465.992, 466, 466.210, 466.255, 466.265-270, 466.530, 466.635-680, 466.706-835, 466.858-895, 466.990-994, 467.050, 467.990, 468, 468.020, 468.035, 468.070, 468.090-140, 468.996, 468A, 468A.020, 468A.025, 468A.060, 468A.990, 468A.992, 468B, 468B.025, 468B.220, 468B.305, 468B.450, 783.620, and 783.992

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** |
| Oregon Attorney General Model Rules | [Oregon Department of Justice website](http://www.doj.state.or.us/help/explain_ag_model_rules.shtml) |
| Senate Bill 105A | [Oregon State Legislature website](http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0105.en.pdf) |
| Oregon Revised Statutes | [DEQ statutes webpage](http://www.deq.state.or.us/regulations/statutes.htm) |
| Oregon Administrative Rules, Chapter 340 Divisions 011 and 012 | [DEQ administrative rules webpage](http://www.deq.state.or.us/regulations/rules.htm) |
| Water Quality Policy Option Package #120 | [DEQ’s Governor’s Balanced Budget 2013-15](http://www.deq.state.or.us/msd/budget/1315GBB/GBB2013-15.pdf) |

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| Fee Analysis |

The Oregon Environmental Quality Commission approval of this rule proposal would establish new fees. EQC authority to act on the proposed fees is ORS 192.410 - ORS 192.505 & ORS 468.020.

Brief description of proposed fees

Establish a $7.50 base fee for onsite program public record request.

Reasons

The proposed fees would address 12 counties where DEQ operates the onsite program. DEQ maintains records in Warrenton, Coos Bay, Medford, and Pendleton field offices. DEQ estimates it takes 50 – 75 hours of staff time per month to respond to public requests for septic system records. Establishing a $7.50 base fee for record requests is needed to maintain staff to provide these records. Currently, DEQ may only charge for public records if they require more than 15 minutes of staff time, but few requests exceed that timeframe.

Fee proposal alternatives considered

Alternative considered to establishing a $7.50 base fee was to maintain the status quo, with reduced support staff to respond to onsite septic system public record requests.

Fee payer

The fee payer would be any member of the public seeking septic system records, including homeowners, pumpers, installers and realtors.

Affected party involvement in fee-setting process

The proposed fee went through the legislative process.

Summary of impacts

The impact of establishing this fee may reduce the number of records sought. It may be an incentive to find other sources of the records such as asking the septic system installer to provide the record.

Fee payer agreement with fee proposal

There was no opposition testimony to establishing the base fee presented during the legislative hearing.

Links to supporting documents for proposed fees

[2013-2015 DEQ Agency Budget Request](http://www.deq.state.or.us/msd/budget/1315ARB/DEQ-ARB1315.pdf)

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How long will the proposed fee sustain the program?

The current fee proposal is expected to sustain the program for the 2013-2015 biennium.

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| Expected change in revenue (+/-) | | +$8,370 |  | 0.003% |  |  |
| Min GF required by statue/rule to fund program | | n/a |  | 0% |  |  |
| Proposed fee allows General Fund replacement | | n/a |  | 0% |  |  |
| Expected effective date | | 01/02/2014 |  |  |  |  |
|  |  |  | | | | |

Transactions and revenue

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|  |  |  | **Number of transactions** | **Number of Fee Payers** | **Impact on revenue (+/-)** | **Total revenue (+/-)** |  | |
| Current biennium | | | 1,116 | 1,116 | $8,370 | $8,370 |  |
| Next biennium | | | 1,488 | 1,488 | $11,160 | $11,160 |  |

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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) |

Fiscal and Economic Impact

This proposal would not have an economic impact on businesses, individuals or government entities unless they violate Oregon’s environmental regulations. There would be a minimal economic impact on individuals or entities that request onsite septic system public records.

The proposal would raise most penalties and entities penalized under these rules would likely experience an economic impact. The amount of impact would depend on the type of entity, the type of violation, and surrounding circumstances, as specified in OAR 340-012-0140. Penalties:

* Would likely increase by 50 percent for the following entities:
* The largest businesses (*e.g*., business with a Tier 1 industrial National Pollutant Discharge Elimination System wastewater discharge permit, owner of more than ten underground storage tank facilities, large quantity generator of hazardous waste,)
* The largest municipalities (*e.g*., municipal sewage treatment facility with a flow of more than five million gallons per day,) and
* State agencies.
* Would likely increase by 25 percent to 33 percent for smaller businesses and smaller municipalities.
* Would not increase for individuals in the general public and specified small businesses (*e.g*., homeowner open burning, homeowner asbestos, homeowner onsite sewage, owner of one underground storage tank, owner of a heating oil tank, drycleaning business.)

Applying the maximum 50 percent increase to the 382 violations assessed penalties in 2011 and 2012 under the Division 12 matrices, the proposal would increase the average penalty from $4,250 to $6,375. Penalties that DEQ assesses outside the Division 12 assessment process (*i.e*., by expedited enforcement offer, field citation, or mutual agreement and order) are lower than the penalties calculated under Division 12 and, if included, would significantly lower the above averages.

There would also be an economic impact to any entity penalized for an intentional, reckless, or flagrant violation that results in or creates the imminent likelihood for an extreme hazard to the public health or that causes extensive damage to the environment. Amendment to OAR 340-012-0155(1)(a) would increase such penalties by 100 percent to a maximum of $200,000. Few such penalties are assessed and none were assessed in 2011 or 2012.

The proposal increase penalties to entities penalized for specified spill violations would increase the economic impact to these entities. The maximum penalty for negligent or intentional discharge of hazardous materials into waters of the state and the maximum penalty for negligent or intentional failure to clean up spills of oil or hazardous materials spilled into waters of the state would increase from $10,000 to $100,000. The maximum penalty for negligent or intentional discharge of oil into waters of the state would increase from $20,000 to $100,000. No penalties for these types of violations were assessed penalties during 2011 or 2012.

There would be payment of a $7.50 base fee for onsite septic system program public records requests. This fee is the minimum amount that would be paid for each public records request. The total amount could exceed $7.50 if substantial support staff time is needed to fulfill the request or if there is a large number of documents that are being copied. Existing fees in Division 011 would apply in these cases, but these cases are rare for onsite septic system program public records requests.

Statement of Cost of Compliance

Impacts on general public

There would be minimal fiscal or economic impact to the general public in the form of payment of a $7.50 base fee for onsite septic system program public records requests. These records requests are typically submitted when a prospective buyer of property is looking for information about the property including building, planning and sanitation records. These requests are not required, but are submitted at the will of the prospective buyer or their real estate agent. The other rule amendments do not impose regulatory requirements, obligations or restrictions upon the general public, individuals, government or businesses. The rules define DEQ’s civil penalty process and determine DEQ’s civil penalty calculations for violations of Oregon’s environmental regulations.

Impact on other government entities other than DEQ

1. Local governments: In most cases, there would be no fiscal or economic impact. The rules do not impose regulatory requirements, obligations or restrictions upon local governments. The exception would be for a government entity that violates Oregon’s environmental regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case. If a local government is requesting onsite septic system program records, they might have to pay the $7.50 base fee.
2. State agencies: In most cases, there would be no fiscal or economic impact. The rules do not impose regulatory requirements, obligations or restrictions upon state agencies. The exception would be for a state agency that violates Oregon’s environmental regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case. If a state agency is requesting onsite septic system program records, they might have to pay the $7.50 base fee.
3. Impact on DEQ: The fiscal or economic impact to DEQ is unknown at this time for the majority of the proposed rule amendments, but likely there would be no fiscal or economic impact. There is a possibility of a slight increase in DEQ resources if increased penalty calculations result in a greater number of civil penalty appeals that proceed to a formal contested case hearing. There would be a positive fiscal impact on DEQ with regards to the $7.50 base fee for onsite septic system program public records requests, as DEQ receives little compensation for the majority of these requests. DEQ would be better able to cover the costs associated with fulfilling these requests.
4. Impact on large businesses (all businesses that are not small businesses below):

In most cases, there would be no fiscal or economic impact. The rules do not impose regulatory requirements, obligations or restrictions. The exception would be for a business that violates Oregon’s environmental regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case. If a large business is requesting onsite septic system program records, they would pay the $7.50 base fee.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](http://www.leg.state.or.us/ors/183.html)

In most cases, there would be no fiscal or economic impact. The rules do not impose regulatory requirements, obligations or restrictions. The exception would be for a small business that violates Oregon environmental regulations where the proposed rules could result in a larger penalty depending on the specific facts of the case. If a small business is requesting onsite septic system program records, they would pay the $7.50 base fee.

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | Every small business in Oregon subject to DEQ regulatory requirements could be subject to the proposed rules. However, these rules only affect small businesses assessed a penalty for violating Oregon environmental regulations or those that must file or serve documents for a contested case hearing. |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | No additional activities are required to comply with the proposed rules. |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | No additional resources are required to comply with the proposed rules. |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | DEQ included small business representatives on its advisory committee during the rulemaking process. |

Documents relied on for fiscal and economic impact

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| **Document title** | **Document location** |
| Oregon Revised Statutes | [DEQ statutes webpage](http://www.deq.state.or.us/regulations/statutes.htm) |
| Oregon Administrative Rules Chapter 340 Divisions 011, 012 and 200 | [DEQ administrative rules webpage](http://www.deq.state.or.us/regulations/rules.htm) |

Advisory committee

DEQ appointed an advisory committee for Division 012 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 complies with [ORS 183.540](http://www.leg.state.or.us/ors/183.html).

The committee reviewed the fiscal impact statement and documented its recommendation in the approved minutes dated April 5, 2013.

The committee agreed with the fiscal impact statement and had no further comments or suggestions. In compliance with [ORS 183.540](http://www.leg.state.or.us/ors/183.html), the committee considered how to reduce the economic impact on small business and determined that Division 012 already accounts for costs to small business by placing smaller, less sophisticated violators on lower penalty matrices. The Division 012 rules only apply to businesses and individuals that violate Oregon’s environmental regulations and are subject to subsequent civil penalties. The rules impose no new regulatory obligations or fees.

DEQ did not appoint an advisory committee for Division 011. Proposed changes to this rule reflect changes to align with the current Oregon Attorney General Model Rules, and the Water Quality Policy Option Package #120 that was approved by the 2013 Legislature.

Housing cost

To comply with [ORS 183.534](http://www.leg.state.or.us/ors/183.html), DEQ determined the proposed rules would have minimal 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. The rules impose no new regulatory obligations but do require payment of a $7.50 base fee if development of the property includes submittal of an onsite septic system program public records request.

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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

DEQ determined this rule proposal is “in addition to federal requirements” as required under [ORS 468A.327(1)(a)](http://www.oregonlaws.org/ors/468A.327) and [OAR 340-011-0029(1)(a)](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html).

The proposed amendments to Division 011 implement changes to the DOJ’s Oregon Attorney General Model Rules.

The proposed amendments to Division 012 implement the increased civil penalty maximums authorized by Senate Bill 105A and Oregon statutes, and define DEQ’s civil penalty process and penalty calculations.

What alternatives did DEQ consider if any?

Division 011: DEQ did not consider other alternatives since the Division 011 rules must align with the Oregon Attorney General Model Rules, and because the onsite program is a fee-supported program with a “fee for service” design.

Division 012: DEQ developed the proposed amendments through advice from the rulemaking committees. During that process, many alternatives were considered regarding whether and how to implement the statutory penalty maximums increased by Senate Bill 105A (2009).  Other alternatives considered include not modifying the penalties at all, modifying the base penalties in the penalty formula by different amounts, and changing penalty formula factors in different ways.

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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 listed under the Chapter 340 Action section above do not affect existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

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| Stakeholder and public involvement |

Insert information from NOTICE here Overview

* Advisory committee
* EQC involvement
* Public notice

CHANGE FROM FUTURE TO PAST TENSE

Public hearings and comment

DEQ held ## public hearing(s). The comment period closed on mmm dd, yyyy at ##:## p.m. DEQ received ## 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.

Advisory committee

DEQ convened the Division 012 advisory committee on Nov. 28, 2012. The committee charter stated the expected outcome was for committee members to provide DEQ comments that reflect their perspectives and beliefs about DEQ’s penalty calculation formula and process.

The 11-member committee included representatives from Associated Oregon Industries, Association of Clean Water Agencies, business legal representatives, Lane Regional Air Protection Agency, environmental and environmental justice advocates, US Environmental Protection Agency, Portland Bureau of Environmental Services, City of Pendleton mayor and two small businesses. The committee met two times over five months. In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee recognized the overall need to increase penalties and generally expressed approval of DEQ’s proposal for distributing base penalty increases in the penalty matrices at OAR 340-012-0140. A few committee members thought the increased base penalties should be higher.

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the annual DEQ Rulemaking Plan review and monthly status report. DEQ shared information about this rulemaking with the EQC in the Director's Dialogue June 20, 2013. At EQC’s request, DEQ will present an informational item to the commission about the rulemaking at the October EQC meeting. DEQ also shares information with the EQC about budget and legislative updates. DEQ shared information about the 2013 legislative session that included Water Quality Policy Option Package #120 during the December 7, 2013 EQC meeting. Rulemaking to implement Package #120 commenced after legislative approval on June 26, 2013. The $7.50 base fee for onsite septic system public records requests was included in Package #120.

Public notice

The Secretary of State published the Notice of Proposed Rulemaking with Hearing for this rulemaking in the September 2013 [*Oregon Bulletin*](http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html). DEQ also:

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on Aug. 15, 2013.
* E-mailed notice on Aug. 15, 2013 to:
* Interested parties through GovDelivery
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
  + Jackie Dingfelder, Chair, Environment and Natural Resources Committee
  + Alan Olsen, Vice-Chair, Environment and Natural Resources Committee
  + Jules Bailey, Chair, Energy and Environment Committee
  + Deborah Boone, Vice-Chair, Energy and Environment Committee
  + Mark Johnson, Vice-Chair, Energy and Environment Committee
  + Chris Edwards, Co-Chair, Ways & Means, Subcommittee on Natural Resources
  + Ben Unger, Co-Chair, Ways & Means, Subcommittee on Natural Resources
* Members of the advisory committee
* Sent notice to EPA on Aug. 1, 2013
* Published notice in The Oregonian on Aug. 15, 2013

Presiding Officers’ Record

[ADAPT THIS SECTION TO THE HEARINGS PLANNED FOR THIS RULEMAKING.]

The presiding officer(s), summarized procedures for the hearing including notification that DEQ was recording the hearing. [OPTION 1]The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form or, if attending through iLinc, to use the “chat” feature to indicate their intent to present comments. [OPTION 2]For the hearings listed below that had attendees, the presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form or, if attending through iLinc, to use the “chat” feature to indicate their intent to present comments. For hearings that had zero attendees, the presiding officer adjourned the hearing(s) 30 minutes after the time convened.

According to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), [OPTION 1]the presiding officer [OPTION 2]staff presenter [FOR BOTH OPTIONS]summarized the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html) and responded to any questions about the rulemaking.

DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ’S interested parties list for this rule and to the commenter section of this staff report. The commenter list includes a cross reference to the hearing number. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

|  |
| --- |
| Summary of comments and DEQ responses |

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

[OPTION 1 – USE THIS OPTION IF THERE ARE FEW COMMENTS]

1. **Comment** [ENTER SUMMARY OF THIS COMMENT CATEGORY]

DEQ received ## [ENTER NUMBER OF COMMENTS THAT DEQ RECEIVED IN THIS CATEGORY] comments in this category from commenters ##, ##, ## and ## [CROSS REFERENCE TO COMMENTER NUMBER OR NUMBERS THAT SUBMITTED COMMENTS IN THIS CATEGORY] listed in the *Commenter* section below.

Response [ENTER DEQ’S RESPONSE TO THIS CATEGORY OF COMMENTS] Enter text

1. **Comment** [ENTER SUMMARY OF THIS COMMENT CATEGORY]

DEQ received ## [ENTER NUMBER OF COMMENTS THAT DEQ RECEIVED IN THIS CATEGORY] comments in this category from commenters ##, ##, ## and ## [CROSS REFERENCE TO COMMENTER NUMBER OR NUMBERS THAT SUBMITTED COMMENTS IN THIS CATEGORY] listed in the *Commenter* section below.

Response [ENTER DEQ’S RESPONSE TO THIS CATEGORY OF COMMENTS] Enter text

1. **Comment** [ENTER SUMMARY OF THIS COMMENT CATEGORY]

DEQ received ## [ENTER NUMBER OF COMMENTS THAT DEQ RECEIVED IN THIS CATEGORY] comments in this category from commenters ##, ##, ## and ## [CROSS REFERENCE TO COMMENTER NUMBER OR NUMBERS THAT SUBMITTED COMMENTS IN THIS CATEGORY] listed in the *Commenter* section below.

Response [ENTER DEQ’S RESPONSE TO THIS CATEGORY OF COMMENTS] Enter text

[OPTION 2 – USE THE COMMENT WORKBOOK IF YOU HAVE A LOT OF COMMENTS THAT NEED ORGANIZATION]

**X**

* Follow instruction in cells A2:D2 on the STEP 2 worksheet in COMMENT.WORKBOOK-5.0~ using the Filter *Receive by deadline* by “**Yes**” sequence
* Paste the table at the X
* Delete this box when finished

|  |
| --- |
| Commenters |

Comments received by close of public comment period

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

[OPTION 1 – USE THIS OPTION IF THERE ARE FEW COMMENTS]

1. **Commenter** [ENTER NAME]

Affiliation[NAME OF GROUP REPRESENTING]

This commenter submitted comments under categories [CROSS REFERENCE TO COMMENT CATEGORIES USING ##, ##, ##] in the *Summary of comments and DEQ responses* section above.

1. **Commenter** [ENTER NAME]

Affiliation[NAME OF GROUP REPRESENTING]

This commenter submitted comments under categories [CROSS REFERENCE TO COMMENT CATEGORIES USING ##, ##, ##] in the *Summary of comments and DEQ responses* section above.

1. **Commenter** [ENTER NAME]

Affiliation[NAME OF GROUP REPRESENTING]

This commenter submitted comments under categories [CROSS REFERENCE TO COMMENT CATEGORIES USING ##, ##, ##] in the *Summary of comments and DEQ responses* section above.

[OPTION 2 – USE THE COMMENT WORKBOOK IF YOU HAVE A LOT OF COMMENTS THAT NEED ORGANIZATION]

**X**

* Follow instruction in cells A2:D2 on the STEP 1 worksheet in COMMENT.WORKBOOK-5.0~ using the Filter *Receive by deadline* by “**Yes**” sequence
* Paste the table at the X
* Delete this box when finished

Comments received after close of public comment period

The table below lists ### people and organizations who submitted comments but DEQ did not receive the comments by the close of public comment on mmm dd, yyyy at ##:## p.m. DEQ cannot consider comments from any party received **after** the public comment deadline.

[OPTION 1 – USE THIS OPTION IF THERE ARE FEW COMMENTS]

1. **Commenter** [ENTER NAME]

Affiliation[NAME OF GROUP REPRESENTING]

This commenter submitted comments under categories [CROSS REFERENCE TO COMMENT CATEGORIES USING ##, ##, ##] in the *Summary of comments and DEQ responses* section above.

1. **Commenter** [ENTER NAME]

Affiliation[NAME OF GROUP REPRESENTING]

This commenter submitted comments under categories [CROSS REFERENCE TO COMMENT CATEGORIES USING ##, ##, ##] in the *Summary of comments and DEQ responses* section above.

1. **Commenter** [ENTER NAME]

Affiliation[NAME OF GROUP REPRESENTING]

This commenter submitted comments under categories [CROSS REFERENCE TO COMMENT CATEGORIES USING ##, ##, ##] in the *Summary of comments and DEQ responses* section above.

[OPTION 2 – USE THE COMMENT WORKBOOK IF YOU HAVE A LOT OF COMMENTS THAT NEED ORGANIZATION]

**X**

* Follow instruction in cells A2:D2 on the STEP 1 worksheet in COMMENT.WORKBOOK-5.0~ using the Filter *Receive by deadline* by “**No**” sequence
* Paste the table at the X
* Delete this box when finished

|  |
| --- |
| Implementation |

Notification

The proposed rules would become effective on mmm, dd, yyyy. DEQ will notify affected parties by [DESCRIBE NOTIFICATION] Enter text here.

Include information about the application of the rule. Be thorough and accurate. Without speculation, describe the implementation elements that have already been decided. Use the example elements below as an example of how to develop elements that apply to this proposal. Remember, this staff report becomes part of the administrative history of the rules and the court may look to it for guidance on deciding how to interpret an ambiguous section of the rule.

Compliance and enforcement

* Affected parties - Enter text here
* DEQ staff - Enter text here

Measuring, sampling, monitoring and reporting

* Affected parties - Enter text here
* DEQ staff - Enter text here

Systems

* Website - Enter text here
* Database - Enter text here
* Invoicing - Enter text here

Training

* Affected parties - Enter text here
* DEQ staff - Enter text here

|  |
| --- |
| 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

**[OPTION 1]** The following APA exemptions from the five-year rule review apply to Choose an item. of the proposed rules:

* Choose an item.
* Choose an item.
* Choose an item.

**[OPTION 2]** The APA exemptions from the five-year rule review under ORS 183.405(4) and 183.450(5) do not apply to the proposed rules.

Five-year rule review required

No later than June 26, 2017, DEQ will review the newly adopted rules required under ORS 183.405 (1) to determine whether:

* The rule has had the intended effect.
* The anticipated fiscal impact of the rule was underestimated or overestimated.
* Subsequent changes in the law require that the rule be repealed or amended.
* There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.450 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.450 (3).