Document Review Checklist

Rulemaking Name: Hazardous Waste Fees 2019

Document Name: EQC Staff Report

Every document that will be shared with anyone outside of DEQ staff must go through management review. This includes reports and PowerPoint presentations.

All documents must be reviewed and approved by the Program Manager, Communications, and either the Agency Rules Coordinator or the Air Quality Rules Coordinator.

The Notice of Rulemaking and EQC Staff Report must also be reviewed and approved by the relevant Division Administrator.

You do not need to use this checklist for routine editing. You should use this checklist whenever a required reviewer is completing their required review and approving the document for distribution.

Each required reviewer should add their name and the date when they complete their final review and approve the document for distribution.

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| --- | --- | --- | --- | --- |
| Reviewer | Name | Date | Date | Date |
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**Oregon Department of Environmental Quality**

July 18, 2019

Oregon Environmental Quality Commission Meeting

Agency Staff Report

**Rulemaking Action Item No. XX**

****Hazardous Waste Fees 2019****

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| Accessibility Information |

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).

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| DEQ Recommendation to the EQC |

DEQ recommends the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

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| Overview |

### DEQ proposal

The Oregon Department of Environmental Quality is proposing to align its hazardous waste fees more closely with program needs and the Consumer Price Index. This effort is a multi-phase project to amend current hazardous waste fee funding over several years to secure sufficient funding by 2026.

This proposal will amend fees established in rule to help bridge program funding through 2024. DEQ will have to seek statutory amendment to statutory fees in 2021 or 2023 to fund the program by 2026.

## Background

DEQ’s Hazardous Waste Program promotes reducing and safely managing hazardous waste, issues permits to waste management facilities, inspects hazardous waste generators and used oil processors, and assists Oregon small businesses in complying with complex federal regulations.

The program’s primary objectives are to:

* Reduce or eliminate the threat of exposure to hazardous waste
* Reduce the use of toxic chemicals in the workplace
* Deliver excellence in service

DEQ remains committed to maintaining state authorization for the hazardous waste program. DEQ’s continued program operation ensures flexibility and responsiveness in implementing the hazardous waste program in Oregon.

Since January 1986, the United States Environmental Protection Agency has authorized Oregon to manage the state’s hazardous waste, or Resource Conservation and Recovery Act, program. DEQ implements the state Hazardous Waste Program, as defined in ORS 466.086 and as applied in OAR 340-100-0002, to ensure harmful wastes are properly managed from “cradle to grave.”

ORS 466.165(1) authorizes DEQ to collect fees to “carry on the monitoring, inspection and surveillance program established under ORS 466.195 and to cover related administrative costs.” Annually, DEQ’s hazardous waste program receives approximately $3.5 million from multiple sources, including various fees (79 percent), a federal grant (20 percent), and small cost recovery funds (1 percent). The program’s General Fund allocation ended in 2014 during an agency-wide shift to grant and fee-based program funding.

The Oregon Legislature approved a budget of 25 full-time equivalent staff for the program’s 2017-2019 budget. Current revenue supports 19 full-time staff.

The proposed fees would address the forecasted $1.2 million - $1.5 million deficit in hazardous waste program revenue for the 2019-21 biennium. This shortfall threatens DEQ’s ability to ensure safe management and disposal of hazardous waste and greatly reduces compliance assistance to small businesses. It also potentially impacts Oregon’s ability to maintain state’s federally authorized Hazardous Waste Program.

DEQ proposes revising:

* Annual hazardous waste generators activity verification fees
* Annual hazardous waste generators management method fee factors
* Annual permitted Treatment Storage and Disposal (TSD) facility compliance determination fees
* TSD permit modification fees
* TSD annual disposal administrative fees

Who does this affect?

These fees will affect 487 fee payers producing hazardous waste and two businesses operating permitted treatment, storage and disposal (TSD) facilities. Of those, DEQ identified 18 remedial clean-up sites, including nine closed sites that intermittently generate hazardous waste.

The proposed amendments of OAR 340-102 and 105 apply to all hazardous waste generators required to report.

|  |
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| Statement of Need |

#### What need would the proposed rules address?

The majority of DEQ’s hazardous waste program fees have remained unchanged for 20 years. The legislature has not adjusted statutory fees since 2007 and DEQ has not adjusted fees established in rule since 1998. Neither has been adjusted for inflation. By the 2019-21 biennium, funding will be insufficient to support current service levels needed to maintain the program.

DEQ must establish the new fees by July 2019 to cover costs associated with implementing the hazardous waste program and delivering services to regulated entities. The program has significantly reduced staff and is currently operating below the legislatively approved budget staffing levels by three positions.

#### How would the proposed rules address the need?

If approved, DEQ would begin receiving new fee revenue by July 2019. This will help address the forecasted $1.2 million - $1.5 million deficit in the hazardous waste program for the 2019-21 biennium. The increased revenue will allow DEQ to maintain positions. No new positions are included in this rulemaking.

The proposed fees will ensure DEQ continues implementing the state’s federally authorized hazardous waste program.

#### How will DEQ know the rule addressed the need?

If the Environmental Quality Commission approves the fees, DEQ will use them to:

* Better align fees with the program‘s workload
* Maintain existing positions
* Help balance the program’s budget
* Meet federal requirements to maintain state program authorization

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| Rules Affected, Authorities, Supporting Documents |

## Lead division

Land Quality Division

## Program or activity

Hazardous Waste Program

## Chapter 340 action

### Amend – OAR

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 340-102-0065 | | 340-105-0113 | |  |  |  |
|  |  | |  | |  |  |

### Statutory authority – ORS

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 466.165 | 466.020 | 466.165 | | 468.020 |  | |
| 468.020 | 466.075 | 466.195 |  | |  |

### Statute implemented – ORS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 466.165 | 466.045 | 466.165 |  |  |
|  |  |  |  |  |

## Documents relied on for rulemaking

### 

| Document title | Document location |
| --- | --- |
| [2019-21 DEQ Agency Request Budget](https://www.oregon.gov/deq/FilterDocs/ARB-2019-21.pdf)  [2017-19 DEQ Legislatively Approved Budget](https://www.oregon.gov/deq/FilterDocs/1719LAB.pdf)  2018 Hazardous Waste Generator Reporters  [2018 Hazardous Waste Fees Advisory Committee Notes](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhwfees2019.aspx#meetings) | DEQ Headquarters |
| 2016 Oregon Employment Department Data  Businesses with 50 or fewer employees | Oregon Employment Department  875 Union Street NE  Salem, OR 97311  <https://www.qualityinfo.org/bi> |
| [2018 US Bureau of Labor Statistics Consumer Price Index](https://data.bls.gov/timeseries/CUUR0400SA0?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true)  (West, not seasonally adjusted) | U.S. Bureau of Labor Statistics  2 Massachusetts Avenue, NE  Washington, DC 20212-0001 |

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| --- |
| Fee Analysis |

The Environmental Quality Commission’s approval of these proposed rule amendments would increase existing Hazardous Waste Program fees. Authority to adopt the proposed rules is ORS 466.020, 466.045, 466.075, 466.165, 466.195 and 468.020.

## Brief description of proposed fees

This rulemaking amends the hazardous waste generator and TSD facility fees to address a projected funding shortfall.

## Reasons

The proposed fees would address the projected Hazardous Waste Program funding shortfall in the 2019-21 biennium. Factors contributing to the projected funding shortfall include:

### Change in state revenue

The Hazardous Waste Program received $1.2 million in General Funds in 1999. Since then, the legislature has steadily reduced the amount of General Fund support and eliminated it in 2014.

### Change in fee revenue

Since 2004, Oregon’s Hazardous Waste Program funding has significantly decreased. This includes landfill hazardous waste tipping fees (approximately 60 percent) and hazardous waste permit fees. Program staffing during this time decreased by 30 percent.

### Change in other fund revenue

Since 2004, the program’s Environmental Protection Agency Performance Partnership Grant funding decreased by approximately seven percent.

### Increased program costs

Increased program costs include, but are not limited to, salaries, benefits, and information technology updates. This includes replacing two information systems to ensure continued compatibility with the State of Oregon’s information technology standards and security requirements.

### Change in transaction costs

The program has two currently operating TSD permitted facilities. Permit modification fees remain at the 1997 level, without adjustment for inflation.

### Program streamlining

The program has cut costs over the last decade by minimizing expenses, reducing overhead, holding positions vacant, and supplementing with a small carry-over ending fund balance.

### Static number of base fee payers

The number of hazardous waste generators reporting annually in the past 10 years has remained relatively static with an average 470. However, in the same timeframe, the program’s staff level decreased from 39 legislatively approved FTE to the current 25 FTE.

## Fee proposal alternatives considered

The program considered the following fee increase alternatives:

* No fee increases, which does not address the projected shortfall in revenue
* Additional cost saving activities, which would require additional staffing reductions and possible loss in ability to meet EPA commitments needed to maintain program authorization.

In addition, the program considered the following, which requires changing the Oregon Revised Statutes. However, these options are out of the scope of the proposed rulemaking:

* Amending hazardous waste generator fee cap of $32,500 to help cover associated costs
* Amending hazardous waste metric ton $130 fee
* Amending hazardous waste permit renewal fees of $150,000 to help cover costs
* Tying fees to Inflation or Consumer Price Index
* Recovering costs for permit modifications

## Fee payer

The proposed rules will increase the annual hazardous waste activity verification fees for businesses generating more than 220 pounds of hazardous waste per calendar month or 2.2 pounds of acutely hazardous waste per calendar month. The amendments will also increase all management method factors. DEQ estimates this will affect 487 fee payers.

The proposed rules will also increase the annual hazardous waste permit compliance determination fees, increase the hazardous waste permit modification fees, and add an annual administrative disposal fee for operating permitted TSD facilities. The proposed rules will affect two operating permitted TSD facilities.

## Affected party involvement in fee-setting process

DEQ convened a nine-member Hazardous Waste Fees Advisory Committee that also served as the fiscal advisors in the fee-setting process. Committee members included statewide geographic representation, directly and indirectly affected regulated parties for large and small businesses, business advocates, and environmental interests.

## Fee payer agreement with fee proposal

DEQ utilized the advisory committee’s discussions in forming draft proposals. The draft proposals were part of the required formal notice process that included a public hearing and an opportunity for the public to comment.

DEQ considered all comments before finalizing and presenting the proposed fee package to the commission in July 2019.

## When were these fees last increased?

* The generator management method factor has not changed since established in 1992.
* The generator annual activity verification fee last changed in 1997 when the small quantity generator fee increased from $200 to $300 and the large quantity generator fee increased from $350 to $525.
* Permitting annual compliance determination fees have remained the same since 1997 and permit modification fees since 1998.

Hazardous waste generator fee statutory changes not considered in this rulemaking:

* The annual metric ton generator fee changed in 2007 from $110 to $130 per metric ton
* The hazardous waste generation fee cap changed in 2007 from $27,500 to $32,500

## How long will the current fee sustain the program?

The program has reduced expenditures and is still experiencing an annual $1.0 million plus deficit. Without additional revenue, the program will exhaust all available fund sources in July 2019 and the program will need to consider other cost reductions by December 2019.

| **Current Biennial Fees** | | |
| --- | --- | --- |
|  | | **Percentage Covered by this Source** |
| Program costs covered by fees\* | $6,070,641 | 74 percent |
| Program costs covered by General Fund | $0 | 0 percent |
| \*Source: DEQ 2017-19 Legislative Approved Budget | | |
|  | | |
| **Fee Last Changed** | | |
| Established Management Method Factor | 1992 | |
| Generator Annual Activity Verification | 1997 | |
| Permit Annual Compliance Determination | 1997 | |
| Permit Modification Fee | 1998 | |

## How long will the proposed fee sustain the program?

DEQ is looking at several fee-funding alternatives in a multi-phase effort to address this deficit and to sustain the program through 2026. During the current rulemaking, Phase I, DEQ will address fees requiring rule changes only. DEQ must make additional rule changes and propose new statutory changes within the next seven years to secure long-term, stable funding to maintain the program at its current full-time equivalent service level.

| **Proposed Fees** | | |
| --- | --- | --- |
| Expected change in revenue (+/-) – generators | + ~ 1,127,527 | 73 percent |
| Expected change in revenue (+/-) – permitting | + ~ $576,500 | 159 percent |
| Expected effective date  (begins multi-year increase) | July 2019 with phase-in through 2024 for generator fees | |

## Transactions and revenue

For hazardous waste generators annually reporting:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Transactions and Revenue** | | | | |
| **Biennium** | **Number of transactions** | **Number of fee**  **Payers** | **Impact on revenue**  **(+/-)** | **Total revenue**  **(+/-)** |
| 2017-19 current | ~ 487 | ~ 487 | + $0 | + $ 0 |
| 2019-21 biennium | ~ 487 | ~ 487 | + ~ $600,953 | + ~$2,150,953 |
| 2021-23 biennium | ~ 487 | ~ 487 | + ~ $299,477 | + ~$2,450,429 |
| 2023-25 biennium | ~ 487 | ~ 487 | + ~ $227,098 | + ~$2,677,527 |

For permitted hazardous waste TSD facilities:

| **Transactions and Revenue** | | | | |
| --- | --- | --- | --- | --- |
| **Biennium** | **Number of transactions** | **Number of fee**  **payers** | **Impact on revenue**  **(+/-)** | **Total revenue**  **(+/-)** |
| 2017-19 current | 2 | 2 | + $0 | + $0 |
| 2019-21 biennium | 2 | 2 | + ~$576,500 | + ~$939,000 |

## Generator Fees

DEQ’s current annual hazardous generator fee has two components:

1. An annual activity verification fee = $525 or $300, dependant on how much hazardous waste is generated, which is added to:
2. An annual hazardous waste generation fee (includes management method factor) = amount of metric tons waste multiplied by $130 multiplied by the management method factor

For final formula:

[Activity Verification Fee + (# metric tons x $130 x management method fee factor)\*]

\* Subject to $32,500 cap

Both parts combine to represent the total fee included on the annual hazardous waste invoice. DEQ has a current generator fee cap of $32,500, which applies only to Part 2 of this formula.

### 1. Annual activity verification fee

The fee is based on the generator category. A generator can be a large quantity generator, a small quantity generator, or a conditionally exempt generator. All generators of hazardous waste that notify DEQ of their activities and obtain a Resource Conservation and Recovery Act Site Identification Number must verify their basic registration information annually. They are assessed a fee according to their generator category.

a. Current Annual Activity Verification Fees are:

* Large Quantity Generators- $525
* Small Quantity Generators- $300
* Conditionally Exempt Generators - No fee

The table below shows how DEQ defines hazardous waste generators:

| **Informational Only: Defines hazardous waste generator categories** | | |
| --- | --- | --- |
| **Generator Category** | **Accumulation Limit** | **Storage/Shipping Schedule** |
| **Large Quantity Generator** Generates more than 2,220 lbs. of hazardous waste per calendar month, and generates more than 2.2 lbs. of acutely hazardous waste per calendar month. | No limit | Generator must ship all accumulated hazardous waste off-site within 90 days of accumulation start date. If generator does not meet the 90-day deadline, they are required to obtain a hazardous waste storage facility permit. |
| **Small Quantity Generator** Generates more than 220 lbs. and less than 2,200 lbs. of hazardous waste per calendar month, and generates no more than 2.2 lbs. of acutely hazardous waste per calendar month. | * 13,200 lbs. If generator exceeds this limit, a permit is required * Accumulates no more than 2.2 lbs. of acutely hazardous waste at any time. | Generator must ship waste off-site within 180 days after the waste was first placed in a container. If the receiving facility is more than 200 miles from generation site, the generator may store wastes up to 270 days. |
| Conditionally Exempt Small Quantity Generator  Generates 220 lbs. or less of hazardous waste per calendar month and generate no more than 2.2 lbs. of acutely hazardous waste per calendar month. | * 2,200 lbs. * Accumulates no more than 2.2 lbs. of acutely hazardous waste at any time. | 2,200 lbs. or less of hazardous waste may be stored indefinitely. |

The examples below show how DEQ calculates the hazardous waste generator fees:

| **Informational Only: Calculating Hazardous Waste Generator Fees** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Management Method** | **Annual Amount Managed** | **Per Metric Ton** | **Management Method Factor** | **Waste Generation Fee\*\*** | **Generator Activity Verification Fee** | **Total Invoice** |
| Landfill Disposal | 4 metric tons  (8,820 lbs.) | X $130 | X 1.50 | = $780 | + $300 = | $1,080 |
| Fuel Blending | 4 metric tons  (8,820 lbs.) | X $130 | X 0.75 | = $390 | + $525 = | $ 915 |
| \*\* The annual maximum any one generator may pay in hazardous waste generation fees is $32,500.  This annual maximum does not include the activity verification fee. | | | | | | |

b. Proposed Annual Activity Verification Fees:

A three-year phase-in will increase the Annual Hazardous Waste Activity Verification Fee as defined in OAR 340-102-0065(4). The fee will increase by 80 percent to better align with the Consumer Price Index (*1997-2021: 72 percent*). The increase will follow this schedule:

| **Hazardous Waste Generator Annual Activity Verification Fee** | | | | |
| --- | --- | --- | --- | --- |
| **Generator Type** | **Effective in Calendar Year** | | | |
| **Current**  **2018** | **2019**  **(25%)\*\*** | **2020**  **(20%)\*\*** | **2021 & After**  **(20%)\*\*** |
| Large Quantity Generators | $525 | $656 | $788 | $945 |
| Small Quantity Generators | $300 | $375 | $450 | $540 |
| Conditionally Exempt Generators | $0 | $0 | $0 | $0 |
| Annual Fee Revenue\* | $190,200 | ~$237,750 | ~$285,300 | ~$342,360 |
| Additional Annual Revenue | $0 | $47,550 | $47,550 | ~ $57,060 |
| \*Revenue based on 2017 hazardous waste generator invoicing of 196 LQGs and 291 SQGs.  \*\* Percent increase is over previous year. | | | | |

### 2. Annual hazardous waste generation fee

This fee applies to large- and small-quantity generators reporting hazardous waste generation and management during a calendar year. One portion of this calculation is the management method factors, which this rulemaking is addressing. The management method factors reflect Oregon’s environmental hierarchy of preferred management methods and offer financial incentives to responsibly manage and reduce hazardous waste.

a. Current Management Method Fee Factors:

| **Management Method** | **Fee Factor** |
| --- | --- |
| Metals recovery (for reuse) | 0.50 |
| Solvents recovery | 0.50 |
| Other recovery | 0.50 |
| Hazardous wastewater not managed immediately upon generation, only in on-site elementary neutralization unit(s) or wastewater treatment unit(s) | 0.50 |
| Incineration | 1.00 |
| Energy recovery (reuse as fuel) | 0.75 |
| Fuel blending | 0.75 |
| Aqueous inorganic treatment | 1.00 |
| Aqueous organic treatment | 1.00 |
| Aqueous organic and inorganic treatment combined | 1.00 |
| Sludge treatment | 1.00 |
| Other treatment | 1.00 |
| Stabilization | 1.00 |
| Neutralization offsite | 0.75 |
| Land disposal | 1.50 |
| Management method unknown or not reported | 2.00 |
| RCRA-exempt management elementary neutralization unit(s) on-site (includes only corrosive characteristic hazardous waste managed immediately upon generation only in an on-site elementary neutralization unit(s)) | 0.00 |
| Permitted discharge under the federal Clean Water Act Section 402 or 307b (includes only hazardous wastewater managed immediately upon generation only in an on-site wastewater treatment unit(s)) | 0.00 |

b. Proposed Management Method Factors:

A six-year phase-in will increase the management method factors as defined in OAR 340-102-0065(3)(c). This will increase by 70 percent to better align with the Consumer Price Index (*1992-2021: 94 percent*) using this schedule:

| **Proposed Management Method Factor Increase** | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Effective in Calendar**  **year** | **Recovery & Wastewater** | **Energy Recovery & Neutralization *(off site)*** | **Incineration & Treatment** | **Land Disposal** | **Unknown**  **& Not Reported** | **Potential Revenue\***  **by year** | **Potential Additional Annual Revenue** |
| Current-2018 | 0.50 | 0.75 | 1.00 | 1.50 | 2.00 | $1,390,457 | $0 |
| 2019 (12%)+ | 0.56 | 0.84 | 1.12 | 1.68 | 2.24 | $1,557,457 | ~$166,999 |
| 2020 (17%)+ | 0.66 | 0.98 | 1.31 | 1.97 | 2.62 | $1,822,224 | ~$264,768 |
| 2021 (5%)+ | 0.69 | 1.03 | 1.38 | 2.06 | 2.75 | $1,913,336 | ~ $91,111 |
| 2022 (8%)+ | 0.74 | 1.11 | 1.49 | 2.23 | 2.97 | $2,066,403 | ~$153,067 |
| 2023 (7%)+ | 0.80 | 1.19 | 1.59 | 2.39 | 3.18 | $2,211,051 | ~$144,648 |
| 2024 (7%)+ & After | 0.85 | 1.28 | 1.70 | 2.55 | 3.40 | $2,365,824 | ~$154,774 |
| \*Revenue based on 2017 hazardous waste generator invoicing.  + Calculated by percent multiplied by current revenue and subsequently over previous year | | | | | | | |

c. Proposed New Management Method Factor

The proposed rule would add a new management method factor to encourage brownfield or orphaned industrial property site cleanups receiving grant funding. DEQ identified two sites in the last six years that would meet this criteria. Each of those sites had ~$30,000 in disposal costs.

| **New Management Method Factor** | |
| --- | --- |
| **Effective in Calendar year** | **Grant-funded environmental cleanup of a brownfield or orphaned industrial property involving waste residues for off-site treatment and/or landfill disposal** |
| 2019 | 0.00 |

### Permitting Fees

DEQ’s current permitting fees include two components addressed in this rulemaking:

1. Annual permit compliance determination fee
2. Permit modification fee

Permitted hazardous waste TSD facilities with active operating hazardous waste unit(s) are subject to 40 C.F.R. §§ 264, 265, 270, and OAR 340, and subject to the annual compliance determination fee.

DEQ will assess permittees a permit modification fee. This excludes modification related to corrective action.

**1. Annual Compliance Determination Fee**

a. This increases permitted TSD annual compliance determination fees in Oregon Administrative Rule 340-105-0113(3). The fee increases by 31 percent to better align with the Consumer Price Index (*1997-2021: 72 percent*) using this schedule:

| **Permitted Treatment, Storage and Disposal Compliance Determination Fee** | | | |
| --- | --- | --- | --- |
| **Facility Activity Type** | **Current**  **2018** | **Effective in Calendar Year**  **2019** | **Proposed Annual**  **Revenue** |
| Storage | $18,750 | $24,500 | $49,000 |
| Treatment: Single Technology | $37,500 | $49,500 | $0 |
| Treatment: Multiple Technology | $75,000 | $98,500 | $98,500 |
| Disposal Facility: Single Disposal Unit | $75,000 | $98,500 | $0 |
| Disposal Facility: Multiple Disposal Units | $150,000 | $196,500 | $196,500 |
| Post-Closure Facility | $18,750 | $24,500 | $0 |
| **Revenue Effect** | | | |
| Annual Permit Fee Revenue\* | $262,500 |  | ~$344,000 |
| Additional Annual Revenue |  |  | ~$81,500 |
| \*Revenue based on 2018 TSD reporting data of 2 Storage, 1 Multi-Treatment, 1 Multi-Disposal | | | |

Where more than one hazardous waste management activity takes place at a single facility, DEQ will assess all of the applicable category Annual Compliance Determination Fees.

b. New Permitted Operating Hazardous Waste Disposal Administrative Fee

This introduces a new administrative fee of $5.50 per metric ton of waste disposed into a permitted Subtitle C land unit, by operating Oregon permitted hazardous waste disposal facilities. DEQ expects approximately 80 to 90 percent of the metric ton volume will be from out-of-state generators. The rulemaking adds the new annual administrative fee using this schedule:

| **New Permit Administration Fee** | | |
| --- | --- | --- |
| **Type** | **Current**  **2018** | **Effective in**  **Calendar Year 2019** |
| Permitted Operating Disposal Fee | $0 | $5.50 per metric ton |
| Revenue Change | | |
| Annual fee revenue\* | $0 |  |
| Potential additional revenue |  | ~$495,000 |
| \*Revenue based on ~90,000 metric tons hazardous waste disposed in Oregon annually | | |

**2. Permit Modification Fee**

This increases the permit modification OAR 340-105-0113(4) fees 59 percent. This better aligns with the Consumer Price Index (*1992-2021: 94 percent*) and streamlines the modification types to remove low and medium workloads using this schedule:

| **Permit Modification Fee** | | | |
| --- | --- | --- | --- |
| **Modification Type** | **Current**  **2018** | **Effective in**  **Calendar Year 2019** | **Potential**  **Variable Revenue\*** |
| Class 1 Low Workload | $425 | $0 |  |
| Class 1 Medium Workload | $1,500 | $0 |  |
| Class 1 High Workload | $2,800 | $4,500 | $9,000 |
| Class 2 Low Workload | $5,000 | $0 |  |
| Class 2 Medium Workload | $10,000 | $0 |  |
| Class 2 High Workload | $20,000 | $31,800 | $31,800 |
| Class 2 Processed as Class 3 | $31,000 | $0 |  |
| Class 3 Low Workload | $7,500 | $0 |  |
| Class 3 Medium Workload | $15,000 | $0 |  |
| Class 3 High Workload | $31,000 | $49,300 |  |
| **Revenue Effect** | | | |
| Revenue\* | ~$7,350 |  | ~$40,800 |
| Potential Additional Revenue |  |  | ~$33,450 |
| \*Revenue based on 20-year average of 2-Class 1 and 1-Class 2 | | | |

DEQ only receives permit modification fees when permittees request a modification. These fees are not a reliable source of annual revenue.

|  |
| --- |
| **Statement of Fiscal and Economic Impact** |

## Fiscal and Economic Impact

For Generators

The proposed generator rules will increase the annual hazardous waste reporting fees for businesses generating more than 220 pounds of hazardous waste per calendar month, generating 2.2 pounds of acutely hazardous waste per calendar month, or accumulating more than 2,200 pounds at any one time. The rulemaking will not affect conditionally exempt generators generating less than the above amounts of hazardous waste.

DEQ reviewed its hazardous waste registered businesses and found this rule will affect 487 active businesses that report their hazardous wastes. A small number of Oregon businesses may report periodically as they conduct a chemical clean out or one-time hazardous waste cleanup event that would move them from the conditionally exempt category to a small or large quantity generator of hazardous waste.

For Permitting

The proposed permitting rules will increase the annual hazardous waste compliance determination fees, add a new annual permitted operating disposal administrative fee, and amend the permit modification fees for businesses permitted to operate TSD facilities.

DEQ reviewed its hazardous waste permitted TSD facilities and found this rule would affect two active operating TSD facilities that report their hazardous wastes.

## Statement of Cost of Compliance

DEQ anticipates this rule adoption will cause small economic impacts on its own expenditures. DEQ will make administrative changes on the annual reporting and accounting systems. We expect this impact to be minimal.

Any rule change requires staff training and outreach to the regulated community. DEQ expects this impact to be minimal, as DEQ currently performs outreach through the hazardous waste annual reporting notifications and through the hazardous waste technical assistance program to regulated facilities.

State, federal and local governments

**Direct Impacts**

For state, federal and local governments annually reporting their hazardous waste generation and management activity, compliance costs associated with the proposed rules are identical to costs described under “Large Businesses.”

**Indirect Impacts**

The proposed rules would have the same indirect costs as “Large Businesses” indirect impacts.

### Public

**Direct Impacts**

DEQ anticipates there will be no fiscal impact on the public, as fees and a federal grant fund the program. DEQ does not use any Oregon General Funds to support the Hazardous Waste Program.

### Large businesses - businesses with more than 50 employees

**Hazardous Waste Generator Direct Impacts**

DEQ anticipates there will be a fiscal impact to businesses generating and managing hazardous wastes who report. The tables below provide summaries of the proposed direct financial impact of each total fee increase proposal for generators and permitted facilities, respectively.

| **Generator - Large Business Fiscal Impact by 2024** | |
| --- | --- |
| **Annual Activity Verification Generator Fees** | |
| **SQG** | **LQG** |
| $240 increase (200 businesses) | $420 increase (133 large businesses) |
| **Management Method Fee factors**  (this analysis does not includes spills, cleanup sites, remediation sites or closed facilities, to provide the most accurate representation of future impacts) | |
| **SQG** | **LQG** |
| $467 average increase  (200 businesses) | $4,457 (average increase, including cap\*)  (133 businesses) |
| \*This increase would result in 13 additional LQGs reaching the cap. | |

| **Management Method Fee factors**  **Large Business Impacts Estimated Breakdown** | | | | |
| --- | --- | --- | --- | --- |
| **SQG** | | | **LQG** | |
| **Increase** | **# Generators** | | **Increase** | **# Generators** |
| $2,001 - $4,000 | 5 | | $15,001 - $21,000 | 11 (4\*) |
| $1,001 - $2,000 | 23 | | $10,001 - $15,000 | 12 (4\*) |
| $500 - $1,000 | 21 | | $5,000 - $10,000 | 18 (4\*) |
| < $500 | 151 | | < $5,000 | 92 (1\*) |
| Total | 200 | | Total | 133 |
| \*Denotes facilities that will reach the cap based on the increase. | | | | |
| **Permitted Facility – Large Business Fiscal Impact by 2019** | | | | |
| **Proposed - Fee type** | | **Fiscal Impact** | | |
| Permitting Annual Compliance Determination fees | | Two permitted operating TSD facilities will be subject to fee increases of $75,750 and $5,750 respectively for an increase of 31%. | | |
| New Operating TSD Disposal Administrative Fee | | One permitted operating hazardous waste disposal facility will be subject to an annual $5.50 per metric ton disposal administrative fee. This may result in potentially $495,000 in additional revenue based on ~ 90,000 tons annually disposed in a permitted Subtitle C land disposal unit. Approximately 10-20% is in-state disposal.  If the $5.50 per metric ton is passed through directly to Oregon’s hazardous waste large business generators, the estimated impacts of this fee is as follows, based on 2017 disposal data:   * Average annual increase to the 23 reporting CEGs $5.83 * Average annual increase to the 14 SQGs $12.14 * Average annual increase to the 32 LQGs $451.34 | | |
| Permitting Modification Fee | | Permitted TSD facilities will be subject to the applicable hazardous waste permit modification fee when requesting permit modifications. The impact depends on the classification of work needed. A 20-year average identified submission of three permit modifications per year, or roughly ~$40,800 under the amended fee. This proposal would result in an increase in potential revenue of ~$33,450. | | |

**Hazardous Waste Generator Indirect Impacts**

There may be a fiscal impact in addition to the new operating TSD disposal administrative fee. The proposed rules include an increase in permitted hazardous waste TSD permitting fees that may affect generators. Because of increased fees, Oregon’s two operating facilities may decide to pass the costs on to businesses utilizing their services. DEQ is not responsible for these types of business decisions and cannot quantify what those potential costs might be.

**Permitted Treatment, Storage and Disposal Facility Direct Impacts**

DEQ anticipates there will be a fiscal impact to two operating permitted hazardous waste TSD facilities generating and managing hazardous wastes who report. The impact to those businesses would be a direct cost increase of 31 percent to their annual compliance determination fees. In addition, if the facility seeks a modification to its current permit, the business would have a direct cost increase of 59 percent. The proposed fee table above shows a detailed breakdown of the estimated financial impact.

**Permitted Treatment, Storage and Disposal Facility Indirect Impacts**

DEQ anticipates adopting the rules will have no indirect fiscal impacts to permitted TSD businesses. The businesses already report annually, and the proposed rules do not add facilities.

### Small businesses – businesses with 50 or fewer employees

For the purpose of this discussion, a small business has 50 or fewer employees.

**Direct Impacts**

The proposed rule changes will not affect most small business in Oregon. This is because the rules only affect businesses generating more than 220 pounds a month of hazardous waste or more than 2.2 pounds of acutely hazardous waste. DEQ identified 131 small businesses the rules will affect.

DEQ determined the proposed rules would have direct economic impact on all small businesses that report generated hazardous wastes.

DEQ determined the economic impacts on these small businesses will not likely pose a significant impact due to the phased-in multi-year stepped increases. The direct impacts are outlined in the tables below for small business generators and permittees.

| **Proposed Fee type** | | | **Generator - Small Business Fiscal Impact by 2024** | |
| --- | --- | --- | --- | --- |
| Annual Activity Verification Generator | | | SQG: $240 increase (80 small businesses) | |
| LQG: $425 increase (51 small businesses) | |
| Management Method Fee Factors | | | SQG: $695 average increase (80 small businesses)  (This increase would result in three (3) additional LQGs reaching the cap.) | |
| LQG: $3,726 average increase (51 small businesses) (To provide the most accurate representation of future impacts, this analysis does not include spills, cleanup, remediation or closed facilities.) | |
| **Management Method Fee factors**  **Small Business Impacts Estimated Breakdown** | | | |
| **SQG** | | **LQG** | |
| **Increase** | **# Generators** | **Increase** | **# Generators** |
| $1,001 - $4,000 | 18 | $10,001 - $20,000 | 6 |
| $501 - $1,000 | 14 | $5,001 - $10,000 | 7 (1\*) |
| $100 - $500 | 36 | $1,000 - $5,000 | 20 (1\*) |
| < $100 | 12 | < $1,000 | 18 (1\*) |
| Total | 80 | Total | 51 |
| \*Denotes facilities that will reach the cap based on the increase. | | | |

|  |  |
| --- | --- |
| **Proposed Fee type** | **Permitted Facility - Small Business Fiscal Impact by 2019** |
| Permitting fees | Oregon’s two permitted TSD sites are national companies with more than 50 employees, and are not small businesses. |

The following presents a comparison of generator pre-rule and post-rule implementation invoices for five facilities. The facilities chosen represent the 25th, 50th, 75th, 90th and 95th percentile based on the volume of hazardous waste generated for calendar year 2017, as reported in 2018.

| **Estimated Invoices for Small (1) and Large (2) Quantity Generators** | | | | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Cost** | **Percentile** | | | | | | | | | |
| **25th (1)** | | **50th (1)** | | **75th (2)** | | **90th (2)** | | **95th (2)** | |
| 2018 | 2024 | 2018 | 2024 | 2018 | 2024 | 2018 | 2024 | 2018 | 2024 |
| Verification Fee | $300 | $540 | $300 | $540 | $525 | $945 | $525 | $945 | $525 | $945 |
| Mgt. Method Factor | $104 | $289 | $226 | $629 | $1,004 | $2,792 | $3,166 | $8,808 | $21,799 | $32,500 |
| Projected Increase | $425 | | $643 | | $2,213 | | $6,067 | | $11,126 | |

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| --- | --- |
| **Proposed Fee type** | **Permitted Facility - Small Business Fiscal Impact by 2019** |
| Permitting Annual Compliance Determination fees | This increase is unlikely to directly affect small businesses. Oregon’s two permitted TSD facilities are national companies with more than 50 employees nationwide. |
| New Operating TSD Disposal Administrative Fee | If the $5.50 per metric ton is passed directly to small businesses, the estimated impacts will be as follows, based on DEQ 2017 reported hazardous waste disposal data:   * Average annual increase to the 29 CEGs $21.45 * Average annual increase to the 24 SQGs $10.29 * Average annual increase to the 17 LQGs $109.71 |

**Indirect Impacts**

The proposed rules would have the same indirect costs as “Large Businesses.”

**ORS 183.336 Cost of Compliance Effect on Small Businesses**

#### 1. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rules.

Using recent employment data, DEQ compared the 487 businesses registered with the Hazardous Waste Program to current self-reported employment data to determine how many businesses employ 50 or fewer employees. One hundred and thirty-one are small businesses. Of those 131 businesses, 51 are large quantity hazardous waste generators, and 80 are small quantity hazardous waste generators. One is a conditionally exempt generator and thus not subject to the proposed rules.

#### 2. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rules.

No additional activities are required to comply with the proposed rules. Registered hazardous waste generators already pay hazardous waste fees.

#### 3. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rules.

No additional resources are required for compliance with the proposed rules. Registered hazardous waste generators already pay hazardous waste fees.

#### 4. Describe how DEQ involved small businesses in developing this proposed rules.

DEQ included small business representatives and delegates from Oregon Business and Industry who represent small businesses in Oregon on the Hazardous Waste Fee Advisory Committee. The Committee advised DEQ on the cost of compliance for small businesses. DEQ will also provide the rulemaking notice to all hazardous waste businesses registered and who reported as fee-payers within the last three years with Oregon DEQ. These groups included small businesses. Small businesses also had the opportunity to comment though the public comment and public hearing.

## Documents relied on for fiscal economic impact

| Document title | Document location |
| --- | --- |
| Oregon Department of Environmental Quality Annual Hazardous Waste Reporting for disposal in 2016 as reported in 2017 | Oregon DEQ  Hazardous Waste Program  700 NE Multnomah St, Ste. 600  Portland, OR 97232-1400 |
| Oregon Department of Environmental Quality Annual Hazardous Waste Reporting for disposal in 2017 as reported in 2018 | Oregon DEQ  Hazardous Waste Program  700 NE Multnomah St, Ste. 600  Portland, OR 97232-1400 |
| Oregon Department of Employment  2016 data | Employment Department  875 Union Street NE  Salem OR 97311 |

## Advisory committee fiscal review

DEQ convened a nine-member advisory committee that also served as the fiscal advisors in the fee-setting process. The committee consisted of statewide, geographic representation, directly and indirectly affected regulated parties for large and small businesses, business advocates and environmental interests.

During the last committee meeting, DEQ asked the committee to review the draft and consider the fiscal impacts of the proposed rules, as OAR 183.333 requires. DEQ specifically asked the committee:

a. Will the rule have a fiscal impact?

b. If so, what is the extent of the fiscal impact?

c. Will the rule have a significant adverse impact on small businesses (<50 employees)?

d. If so, how can DEQ reduce the economic impact of the rule on small businesses?

### Committee Findings

The committee determined the proposed rules will have economic impacts to all hazardous waste fee payers. The proposed rules will affect all hazardous waste annual reporters, including some businesses that intermittently generate and report hazardous waste due to a one-time cleanout or other infrequent activity. The impact will be different for each business.

The committee did not identify significant adverse impact on small businesses in Oregon. Without additional information, such as business revenues, the full impact to small businesses is difficult to determine. To help minimize the impacts to businesses, the proposed generator fee increases will be phased-in over multiple years.

The committee meeting notes are posted to DEQ’s Hazardous Waste Fees 2019 Rulemaking web page: [Advisory Committee Webpage](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhwfees2019.aspx).

## Housing cost

ORS 183.534 requires DEQ to evaluate whether the proposed rules would affect 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. DEQ determined the proposed rules would have no effect on the development costs because the proposed rules only affect regulated businesses under the hazardous waste regulations.

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| Federal Relationship |

### Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules are not different from or in addition to federal requirements in 40 Code of Federal Regulations 260-268, 270, 273, and Subpart A and Subpart B of part 124.

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| Land Use |

### Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers rules affect land use if:

* The statewide land use planning goals specifically refer to the rule or program
* The rule or program is reasonably expected to have significant effects on:
* Resources, objectives or areas identified in the statewide planning goals
* Present or future land uses identified in acknowledged comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

|  |  |
| --- | --- |
| **Goal** | **Title** |
| 5 | Open Spaces, Scenic and Historic Areas, and Natural Resources |
| 6 | Air, Water and Land Resources Quality |
| 9 | Ocean Resources |
| 11 | Public Facilities and Services |
| 16 | Estuarial Resources |

Statewide goals also specifically reference the following DEQ programs:

* Nonpoint source discharge water quality program – Goal 16
* Water quality and sewage disposal systems – Goal 16
* Water quality permits and oil spill regulations – Goal 19

### Determination

DEQ determined these proposed rules do not affectland use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.

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| EQC Prior Involvement |

On Jan. 24, 2019, DEQ presented to the EQC general program information as a pre-inform for these proposed rule revisions.

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| Advisory Committee |

### Background

DEQ’s nine-member advisory committee, serving as the fiscal advisors in the fee-setting process, met three times in 2018: Aug. 8, Sept. 13 and Oct. 18. Supporting documents are located on the committee’s webpage at: [Hazardous Waste Fees 2019 Rulemaking](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhwfees2019.aspx).

The Committee members were:

| Hazardous Waste Fees Rulemaking Advisory Committee | |
| --- | --- |
| **Name** | **Representing** |
| Keri Bishop | Large Quantity Generator, Northwest |
| Jim Denson, Jr. | Hazardous Waste Permittee, Large Quantity Generator, Eastern |
| Michael Doherty | Small Business, Small Quantity Generator, Northwest |
| Lori Grant | Environment, Statewide |
| Bruce Johnson | Large Quantity Generator, Eastern |
| Marjorie MartzEmerson | Environment, Small Businesses Statewide, Eastern |
| Matthew Sauvageau | Hazardous Waste Permittee, Large Quantity Generator, Northwest |
| Mike Standen | Small Quantity Generator, Small Business, Western |
| Geoffrey B. Tichenor | Oregon Business & Industry, Small Businesses, Statewide |
| Kim Kaminski (Alternate) | Hazardous Waste Permittee, Large Quantity Generator, Northwest |
| Amber Petersen (Alternate) | Large Quantity Generator, Eastern |
| Leah Shannon (Alternate) | Hazardous Waste Permittee, Large Quantity Generator, Eastern |
| Sheila Smith (Alternate) | Hazardous Waste Permittee, Large Quantity Generator, Northwest |

### Meeting notifications

To notify people about the advisory committee’s activities, DEQ:

* Notified 23,744 people about the Advisory Committee’s activities by:
* Sending GovDelivery bulletins, a free email subscription service, to 13,347 recipients to the following lists:
* Hazardous Waste - 3,009
* Hazardous Waste Training - 6,599
* Toxics Use and Hazardous Waste Reduction Program - 2,783
* Rulemaking - 8,316
* DEQ Public Notices - 3,037

### Committee discussions

In addition to the recommendations described in the Statement of Fiscal and Economic Impact section, the committee provided input and discussion on the proposed draft rules. Agendas, meeting summaries and presentation slides are available on the committee’s webpage at: [Hazardous Waste Fees 2019 Rulemaking](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhwfees2019.aspx).

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| Public Engagement |

To notify people about the proposed rulemaking and Jan. 17, 2019 rulemaking hearing, DEQ:

* Filed notice with the Oregon Secretary of State on Dec. 14, 2018, for publication in the January 2019 Oregon Bulletin
* Notified Region 10 EPA by email
* Posted the Notice, Invitation to Comment and Draft Rules on the [webpage](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhwfees2019.aspx) for this rulemaking
* Emailed 23,744 interested parties on the following DEQ lists through GovDelivery:
* Hazardous Waste - 3,009
* Hazardous Waste Training - 6,599
* Toxics Use and Hazardous Waste Reduction Program - 2,783
* Rulemaking - 8,316
* DEQ Public Notices - 3,037
* Emailed 1,014 hazardous waste generator reporters for the last three years in DEQ’s reporting database
* Emailed the following key legislators, required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
* Senator Michael Dembrow, chair, Senate Interim Committee on Environment and Natural Resources
* Senator Alan Olsen, vice-chair, Senate Interim Committee on Environment and Natural Resources
* Representative Ken Helm, chair, House Interim Committee on Energy and Environment
* Representative Karin Power, vice-chair, House Interim Committee on Energy and Environment
* Emailed Advisory Committee members
* Added announcements to the [DEQ public calendar](https://www.oregon.gov/deq/Get-Involved/Pages/Calendar.aspx)
* Provided notice of public meetings and links to information through postings on Twitter and Facebook

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| Public Hearing |

DEQ held one public hearing, and received no comments at the hearing nor during the public comment period.

## Presiding Officers’ Record

### Hearing

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| --- | --- |
| Date | Jan. 17, 2019 |
| Place | Oregon DEQ  700 NE Multnomah St., Suite 600  Portland, OR 97232-1400 |
| Start Time | 6 p.m. |
| Ending Time | 8:01 p.m. |
| Presiding Officer | Mary Fritzmann |

The presiding officer convened the hearing, summarized procedures for the hearing and explained that DEQ was recording. She asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

Two people attended the hearing in person and one person attended by teleconference or webinar. No person presented any oral testimony or written comments.

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| Summary of Public Comments and DEQ Responses |

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# Public comment period

DEQ accepted public comment on the proposed rulemaking, from Friday, Dec. 14, 2018 until 4 p.m. on Tuesday, Jan. 22, 2019.

DEQ did not receive public comment or testimony on the proposed rules, and therefore did not make changes in response to comments.

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| Implementation |

## Notification

The proposed rules if approved by the Commission, would be filed and effective on July 19, 2019.

DEQ would notify affected parties by:

* Notifying Region 10 EPA by email
* Posting the announcement on the [Hazardous Waste Fees 2019 Rulemaking](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhwfees2019.aspx) webpage for this rulemaking, as well as on the [Hazardous Waste Reporting](https://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/HW-Reporting.aspx) and [Oregon Hazardous Waste Rules](https://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/HW-Rules.aspx) webpages
* Emailing 23,744 interested parties on the following DEQ lists through GovDelivery:
  + Hazardous Waste - 3,009
  + Hazardous Waste Training - 6,599
  + Toxics Use and Hazardous Waste Reduction Program - 2,783
  + Rulemaking - 8,316
  + DEQ Public Notices - 3,037
* Emailing Advisory Committee members
* Adding announcement to the [DEQ public calendar](https://www.oregon.gov/deq/Get-Involved/Pages/Calendar.aspx)
* Providing notice and links to information through postings on Twitter and Facebook

## Compliance, enforcement and reporting

* Affected parties – Notify by email 1,014 hazardous waste generator reporters for last three years in DEQ’s reporting database;
* DEQ staff – Email hazardous waste staff

## Systems

* Website - Post fees fact sheet on DEQ’s program websites
* Database – Amend database for new fees
* Invoicing – Send invoices to hazardous waste reporters with new fees

## Training

* Affected parties – Make information available through webinar trainings
* DEQ staff – Train staff and make the information readily available

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| Five-year review – ORS 183.405 |

## Requirement

Oregon law requires DEQ to review newrules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

## Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year review because the proposed rules would amend an existing rule. ORS 183.405(4).