



Oregon Department of Environmental Quality

Dec. 11-12, 2013

**Oregon Environmental Quality Commission meeting
Rulemaking, Action item: O**

Onsite Program Fees and Updates

DEQ recommendation to EQC

DEQ recommends that the Oregon Environmental Quality Commission:

Adopt the proposed PERMANENT rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

Overview

Short summary

The proposed rules would amend DEQ's Onsite Program rules to:

- Implement 2011 and 2013 legislatively-approved fees, including establishing a land use review fee, compliance recovery fee and increases to the surcharge fee and license fees.
- Implement changes to alternative treatment technologies, or ATT, product approval based on 2009 Onsite Advisory Committee recommendations. This includes establishing an ATT system product approval process that provides for performance testing of systems to verify that they are meeting defined treatment standards in the environment and a system to track installations.
- Require that newly-permitted sand filters and pressurized distribution systems have a service contract with ongoing maintenance similar to ATT systems.
- Streamline rules to make it easier for the public to comply.
- Correct errors in the rules and update some sections to contemporary rule standards.
- Remove the site evaluation confirmation application and fee from the rules because anticipated efficiencies were not realized and very few applications were submitted.
- Remove evapotranspiration-absorption systems from the rules. These systems were primarily used in Jackson County and have not been as successful as sand filter systems. DEQ has not issued new permits for these systems in decades.

Brief history

The 2009 Onsite Advisory Committee recommended improvements to the onsite program. Recommendations included requiring owners of certain types of systems to contract with certified maintenance providers and submit annual reports and establishing various fees or fee increases to provide sustainable funding source for the program. DEQ formed the committee in

2009 in response to a dramatic drop in the number of applications in 2008 and the related drop in program revenue.

Regulated parties

The proposed rules would affect septic system owners, manufacturers, certified service providers, county and city onsite agents, system designers and licensed sewage disposal services.

Statement of need

What problem is DEQ trying to solve?

DEQ onsite program fees do not cover program costs despite steps such as leaving positions vacant in Coos County and Clatsop County. Further program cuts would degrade service and reduce office hours and locations that provide customer assistance and accept customer applications.

The 2009 Onsite Advisory Committee recommended rule changes to improve the program, including improving alternative treatment technology system product approval process, ensuring ongoing operation and maintenance of newly permitted sand filter and pressurized distribution systems and providing sustainable cost-recovery improvements. DEQ evaluated the recommendations, successfully implemented some and proposes these rules to address others.

How would the proposed rule meet the need?

Proposed rule	Expected result
Increase surcharge fee by \$40	Generate enough funds for DEQ to maintain current service levels
Sewage Disposal Service license applications subject to surcharge fee in addition to increasing a new license by \$70 per year	Generate enough funds for DEQ to maintain current service levels
Establish compliance recovery fees. Require a documented violator to pay up to double the application fee if an application is required for the violator to obtain compliance.	DEQ recovers some of the costs for working with the violator to obtain compliance.
Establish sand filter and pressurized distribution maintenance requirement. Owners of newly-permitted sand filter and pressurized distribution systems must maintain a service contract with a certified maintenance provider and submit an annual report and fee. These systems are complex and require ongoing maintenance to function properly.	Trained professionals would maintain the systems. The annual report and fee would allow DEQ and their contract county agents to ensure these systems are operated and maintained as required.

Proposed rule	Expected result
Establish alternative treatment technology annual compliance determination fee. Require manufacturers of approved alternative treatment technology systems to submit an annual report and compliance determination fee for each approved model they sell in Oregon.	DEQ would use the fee to sample and analyze wastewater from installed systems to determine if they meet required performance standards.
Establish a land use review fee to cover the costs associated with DEQ's land use review for applications submitted to local planning and building departments. Local planning or building departments require a DEQ review of these applications.	DEQ would use the fee to cover the cost of pulling files, reviewing records and authorizing the building or planning activity, if appropriate.
Establish higher-flow alternative treatment technology product approval application. Require the manufacturer of an alternative treatment technology system designed for sewage flows over 1,500 gallons per day to submit a higher fee than for lower design flows. These higher-flow systems are more complex in their design and require more staff time to review and approve.	The higher application fee would cover the costs of the additional review time.
Revise Land Use Compatibility Statement requirement. DEQ proposes reducing the number of applications that require a land use compatibility statement by better defining "land use action" as it relates to onsite septic systems.	This would reduce the time and cost to septic system repair permit applicants who would no longer be required to obtain a land use compatibility statement from the local planning department.
<p>Change definitions for:</p> <ul style="list-style-type: none"> • 'Maintenance' to allow situations such as replacing a crushed section of pipe without requiring a permit that often exceeds the cost of repairs. • 'Pressure transport pipe' to include gravity movement of effluent in this class of pipe. <p>Clarify the rules for:</p> <ul style="list-style-type: none"> • Temporary holding tank. A 1,500 gallon minimum tank size isn't always warranted as current rules state. The proposed rules would allow the agent's discretion on tank size when soil and weather conditions prevent installation of soil absorption system. • Pretreating wastewater requires a Water Pollution Control Facilities permit, except if a grease interceptor tank is the only pretreatment needed. Current rules require any pretreatment requires a WPCF permit. 	<ul style="list-style-type: none"> • Reduce costs and encourage maintenance of existing systems by redefining maintenance. • Reduce costs and create consistency in redefining pressure transport pipe. • Reduce costs for system owner by allowing flexibility with temporary holding tank size when soil and weather conditions prevent system installation. • Reduce permit and ongoing reporting costs if the only pretreatment required is a grease interceptor or similar tank.
Delete site evaluation confirmation applications. WPCF permit applications allowed site evaluation confirmations if DEQ staff evaluated soil notes and	DEQ or a local agent would conduct the WPCF site evaluations consistent with construction-installation permits. This would reduce time issuing WPCF

Proposed rule	Expected result
maps provided by a qualified consultant. DEQ received less than one application per year. Applications were often incomplete or inaccurate; therefore, required more time to issue the permit.	permits and ensure site evaluation fees cover permit issuance costs.
Identify a DEQ-licensed sewage disposal service as the primary option for installing a system but will continue to allow permittee installation. This is consistent with construction-installation permits.	There would be fewer problems with installations because sewage disposal system installers receive training and are certified.
Homeowners wanting to maintain their own ATT system, recirculating gravel filter or commercial sand filter would need DEQ maintenance provider certification.	Systems required to operate under service contract would have better trained personnel, benefitting the system owner and environment.

How will DEQ know the need is met?

Proposed rule	How will DEQ know the need is met?
Surcharge fee increased by \$40	DEQ maintains current service levels.
Sewage disposal service subject to surcharge fee in addition to increasing a new license by \$70 per year	DEQ maintains current service levels.
Compliance recovery fees	DEQ recovers costs for compliance work associated with these violations through this fee.
Sand filter and pressurized distribution maintenance requirement	Newly-permitted sand filter and pressurized distribution systems are being properly operated and maintained.
Alternative treatment technology annual report and compliance determination fee	DEQ is able to implement the rule as written and verify that systems approved for use in Oregon are performing to the standards in the rules for which they were approved.
Land use review fee	DEQ recovers costs for reviewing these land use actions.
Alternative treatment technology >1500 gpd product approval application	DEQ recovers costs for reviewing product approval applications.
Land Use Compatibility statement not required for repair permit applications	DEQ no longer receives the Land Use Compatibility statements as part of the repair permit applications.
Definition changes for 'maintenance' and 'pressure transport pipe', temporary holding tank and pretreatment clarifications	Agents consistently apply definitions throughout the rules.
Site evaluation confirmations deleted from the rules	Applicants for WPCF permits would be aware that the local agent or DEQ conduct site evaluations.

WPCF installers install the system, not just soil absorption system	Licensed sewage disposal services or the permittee construct WPCF permitted systems.
Service provider needs to be certified	Both DEQ and the manufacturer would certify all service providers for systems that require maintenance contracts with submittal of annual reports.

Rules affected, authorities, supporting documents

Lead division

Water Quality

Program or activity

Onsite Program

Chapter 340 action

Adopt

Amend

OAR 340-018-0030, 340-071-0100, 340-071-0115, 340-071-0120, 340-071-0130, 340-071-0135, 340-071-0140, 340-071-0150, 340-071-0155, 340-071-0160, 340-071-0162, 340-071-0165, 340-071-0170, 340-071-0205, 340-071-0215, 340-071-0220, 340-071-0260, 340-071-0265, , 340-071-0275, 340-071-0290, 340-071-0295, 340-071-0302, 340-071-0325, 340-071-0335, 340-071-0340, 340-071-0345, 340-071-0360, 340-071-0400, 340-071-0415, 340-071-0420, 340-071-0425, 340-071-0435, 340-071-0445, 340-071-0520, 340-071-0600, 340-071-0650

Repeal

OAR 340-071-0131, 340-071-0270

Statutory authority

ORS 183.335, 454.615, 454.625, 468.020, 468.065, 468B.010, 468B.020

Statute implemented

Legislation Senate Bills 5022(2011) and 5520(2013)

ORS 197.180, 454.605 – 454.784, 468.035 – 468.070, 468B.015 – 468B.080

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title	Document location
2011-13 Legislatively Approved Budget	http://www.deq.state.or.us/msd/budget/1113LAB/LAB2011-13.pdf
Water Quality Policy Option Package #120	http://www.deq.state.or.us/msd/budget/1315GGB/GBB2013-15.pdf
Oregon DEQ Onsite Advisory Committee Final Report of Recommended Changes to Rules Governing Onsite Systems	http://www.deq.state.or.us/wq/onsite/docs/AdvisoryCommitteeFinalReport20100208.pdf

Fee Analysis

The Oregon Environmental Quality Commission approval of this rule proposal would establish new fees and increase existing fees. EQC authority to act on the proposed fees is ORS 454.615, 454.625, 468.020 and 468.065(2).

Brief description of proposed fees

DEQ proposes the following new fees:

- Annual maintenance report fee for newly permitted sand filters and pressure distribution systems
- Annual report fee for manufactures of Alternative Treatment Technology systems
- Land use review fee
- Compliance recovery fee for applicants with compliance issues that resulted in a licensing or permitting application
- ATT system application fee for systems sized greater than 1,500 gallons per day

DEQ proposes increasing the following fees:

- Application surcharge fee
- Sewage disposal service license application fee

Reasons

The proposed fee increases would provide funding needed to maintain minimum program functions. New fees were part of the 2009 Onsite Advisory Committee recommendations to address unfunded existing work and fund new work.

The 2009 Onsite Advisory Committee also recommended policy changes that include fees. Examples include alternative treatment technology product approvals with an annual fee, land use review fee, compliance recovery fee, sand filter and pressure distribution fees.

Increased program costs and the decline of the housing market negatively affected the program and funding since the program is dependent on fees typically generated during property development. Application fees, statewide surcharge fees and license fees all dropped at least 40 percent from pre-2008 levels. Even though the volume of work has decreased, there is an expectation that DEQ keep the regional offices open for business to implement all of the services that the program provides including application processing, customer assistance and public records requests. Customers are often one-time customers who are not familiar with all of the requirements.

Fee proposal alternatives considered

DEQ considered not moving forward with this rulemaking. This option would have jeopardized relationships with stakeholders who supported this rulemaking during the 2011 and 2013 Oregon Legislative sessions. Not increasing the surcharge and license fees would result in further program cuts, moving or eliminating support staff and sending statewide applications to Eugene. This would create problems with incomplete applications or customers who need help with the process.

Fee payer

The proposed new fees and increased fees would affect septic system owners, manufacturers of alternative treatment technology systems, septic program applicants, existing and new sewage disposal service licensees and system inspectors.

Affected party involvement in fee-setting process

The proposed fees were fully vetted through the legislative process.

Summary of impacts

Establishing these fees would increase costs for applications for field activities statewide and to obtain a license to install or pump septic systems. Larger pumping businesses would pay an additional fee for each pumper truck beyond the first. DEQ offices in Medford, Coos Bay and Pendleton would retain staff to receive and process septic system applications, and provide assistance to customers including public records requests.

Fee payer agreement with fee proposal

O2WA, the association that represents the onsite industry, and others wrote letters supporting DEQ's policy option package #120 during both the 2011 and 2013 legislative sessions. During these hearings, there was no opposing testimony to establishing the base fee. Other fee payers are more difficult to identify because they only come in once or twice over a lifetime to pay a fee for a particular service.

Links to supporting documents for proposed fees

[2013-2015 DEQ Agency Budget Request](#)
[O2WA 2013 letter of support](#)

How long will the current fee sustain the program?

The current fees are not sufficient to sustain the program for the 2013-2015 biennium. The proposed fee increases would reduce the shortfall by \$550,000. DEQ last increased application fees for services in counties where DEQ started operating the program in 2011. The surcharge was last increased in July 2008. Sewage disposal service license application fees were last increased in February 2002 then reduced in March 2005.

Program costs covered by fees	(estimate) \$3,200,000	100%
Program costs covered by General Fund	\$0	0%

How long will the proposed fee sustain the program?

DEQ projects that the proposed fees would sustain the program for the 2013-15 biennium.

Expected change in revenue (+/-)	\$550,235	17%
Min GF required by statute/rule to fund program	\$0	0%
Proposed fee allows General Fund replacement	\$0	0%
Expected effective date	01/1/2014	

Transactions and revenue

Current biennium

Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
12,400	12,400	\$3,200,000	\$3,200,000

Fee schedule

The amount of the compliance recovery fee shall not exceed the application fee.

OAR 340-071-0140 Onsite System Fee Schedule (affected fees listed)	
Table 9C: Other permitting fees for systems not subject to WPCF permits	
Land use review	\$50
Annual report evaluation: Holding tanks - hard copy submittal	\$30
Annual report evaluation: Holding tanks - online submittal	\$25
Annual report evaluation: sand filters, pressurized distribution systems, recirculating gravel filter systems, and alternative treatment technology – hard copy submittal	\$60
Annual report evaluation: sand filters, pressurized distribution systems, recirculating gravel filter systems, and alternative treatment technology – online submittal	\$50
Table 9E: Sewage disposal service license and truck inspection fees	
New business license (up to three years)	\$425
Pumping equipment license, for second and each subsequent truck	\$15
Table 9F: Other fees	
Alternative treatment technology review (greater than 1,500 gallons per day)	\$3,200
Alternative treatment technology annual compliance determination fee (per listed model)	\$500
DEQ surcharge	\$100

Fiscal and Economic Impact

The proposed rules would have a fiscal and economic impact:

- From implementing the additional regulations and fees that the 2009 Onsite Advisory Committee recommended.
- On people required to pay new or increased fees adopted by the Oregon Legislature in the 2011 and 2013 legislatively-approved budgets.
- From correcting typographical errors, clarifying intent, streamlining processes and deleting obsolete rules to make it easier for affected public, regulators and stakeholders to understand onsite program rules.

Statement of Cost of Compliance

Impacts on public

- Sand filter and pressurized distribution systems need assured maintenance. To accomplish this, proposed rules would require maintenance contracts and annual reporting, which would have a fiscal impact of \$260 to \$360 per year.
- Defining existing system evaluations by private contractors may result in more robust inspections than currently occur at a greater fiscal impact. Excluding the cost of pumping a septic tank, evaluating an existing system in the field would cost in the range of \$200 to \$700. A system with no records would be on the high side of the range.
- Alternative treatment technology system owners must have proper training and certification to do their own maintenance. The fiscal impact of that rule for a system owner maintaining their own system would be \$300 to 700 per year.
- Allowing a reduced size bottomless sand filter following an ATT installation would have a favorable fiscal impact due to requiring approximately 30 percent less sand, a smaller liner and less piping.
- There are new fees or fee increases where the fiscal impact is equal to the fee. There may also be indirect impacts to fees for alternative treatment technology products and sewage disposal service licenses that would likely be passed to the public.
- Not requiring a land use compatibility statement for most repair permit situations would have a positive fiscal impact where local planning departments charge a fee to complete a land use compatibility statement form.
- Relaxing the definitions of pressure transport pipe and maintenance would have a positive fiscal impact to some members of the public.
- Clarifying the rule for temporary holding tanks, number of operations and maintenance contract service visits, and pretreatment would have a positive fiscal impact by providing flexibility in allowing a smaller tank for a holding tank, in some cases having fewer site or service visits and not requiring a Water Pollution Control Facility permit, respectively.

- DEQ expects no fiscal impact for the removal of evapotranspiration-absorption systems, or for the removal of time of transfer evaluations for ATT systems, due to their minimal usage.

Impact on other government entities other than DEQ

a. Local governments

DEQ expects local governments would have fiscal impacts similar to the public impact when they need septic system services, subject to fees.

A notable difference is that a land use compatibility statement will no longer be required with repair permit applications where a local government charges a fee. They would have a negative fiscal impact on local governments whereas the public would have a positive fiscal impact.

Local governments that administer the onsite program and charge a compliance recovery fee would see a positive fiscal impact. Also, the rule requiring sand filters and pressurized distribution systems to have operation and maintenance contracts would require annual reports to be submitted to the regulatory authority, which is either the local government or DEQ. A fee accompanies the annual report, which would be a positive fiscal impact to local governments.

b. State agencies

State agencies would not have a fiscal impact to these rules except in cases where they need onsite services similar to the public, and in those cases the fiscal impact would be similar to the public.

Impact on DEQ [ORS 183.335](#)

DEQ expects the proposed fees would fund the onsite program using \$550,235 in estimated additional revenue from rule changes, new fees and fee increases for the 2013-15 biennium. The estimate was based on the fee changes being implemented in January 2014.

Impact on large businesses (all businesses that are not small businesses below)

The proposed rules would impact large businesses by:

- Increasing sewage disposal service license fees. Few of these businesses have over 50 employees. These large businesses are primarily pumpers or provide more than installing or pumping septic systems. The impact of the proposed fee increase would be about \$103 additional per year for a new three-year license. For pumpers with more than one truck, the impact would be a fee of \$15 per additional pumper truck.
- Increasing fees for ATT product manufacturers. The proposed rules would add a \$500 per year per model fee with an annual fiscal impact of \$250 to prepare the report that is not in the existing rules. Manufacturer with more systems would have a greater fiscal impact.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](#)

Most small businesses affected by this rulemaking are installer or pumper license holders. The other small business sector affected is manufacturers of ATT wastewater treatment systems sold in Oregon and the fiscal impacts would be the same as for large businesses.

a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

There are currently 600 licensed installers and pumpers in Oregon. Assuming that most manufacturers of approved alternative treatment technology systems are small businesses, less than ten small businesses would be subject to the proposed rule.

b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

To comply with the proposed rules, ATT manufactures have to complete and submit an annual inventory report for systems sold and a list of manufacturer-certified maintenance providers.

c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

To comply with the proposed rules, ATT manufactures would need additional resources to prepare and send the report to DEQ annually. All manufacturers already collect this information but current rules do not require submitting the report to DEQ.

d) Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included small business representatives on the 2009 Onsite Advisory Committee. This committee made recommendations for proposed rule to improve the program.

Documents relied on for fiscal and economic impact

Document title	Document location
2011-12 Legislatively Approved Budget	www.oregon.gov/deq
2013-14 Legislatively Approved Budget	www.oregon.gov/deq
Oregon DEQ Onsite Advisory Committee Final Report of Recommended Changes to Rules Governing Onsite Systems	http://www.deq.state.or.us/wq/onsite/docs/AdvisoryCommitteeFinalReport20100208.pdf
Technical Review Committee meeting minutes	Available upon request
2013-14 DEQ Estimated Budget	DEQ Budget Office

Advisory committee

DEQ appointed an advisory committee and considered the committee's recommendations on this fiscal and economic impact statement. In compliance with [ORS 183.333](#), DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact and

- Whether the proposed rules would have a significant impact on small businesses and complies with [ORS 183.540](#).

The committee reviewed the fiscal impact statement and documented its recommendation in the Technical Review Committee approved meeting minutes dated Aug. 28, 2013.

In compliance with [ORS 183.540](#), the committee considered how to reduce the economic impact on small business and determined that the onsite program's regulated community is primarily small businesses that manufacture products used, construct the systems on the site, maintain septic systems and pump the systems. Some proposed rules would benefit small businesses. For example, a broken or crushed pipe may be replaced without a permit if certified an installer or maintenance provider does the work. The 2009 advisory committee, which included many small businesses, proposed the rules to increase ATT system manufacturers' reporting requirements.

The committee recommendations may result in an increase of reported violations and penalties due to expanding service contract and reporting requirements.

Housing cost

Although most onsite septic systems are installed on lots that are greater than 6,000 square feet, to comply with [ORS 183.534](#), DEQ determined the proposed rules may have a minor 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. If the installed septic system is a sand filter or pressurized distribution system, the estimated operation and maintenance costs would be \$200 to \$300 per year, plus a \$60 annual fee to DEQ or the variable local agent fee. The surcharge fee increase would have a housing cost impact when applying for a site evaluation, a permit or other services from DEQ or local agent.

"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

The proposed rules are “in addition to federal requirements.”

The proposed rules protect public health and the environment and address administrative issues and economic concerns. The federal government doesn’t have federal requirements for the onsite program but does provide general guidelines for the development of state or other government programs.

What alternatives did DEQ consider if any?

DEQ considered maintaining the status quo and not moving forward with this rulemaking. This option would have jeopardized relationships with stakeholders who supported this rulemaking in the 2011 and 2013 legislative sessions. Not increasing the surcharge and license fees would require further program cuts, moving or eliminating support staff and sending statewide applications to Eugene. This would create problems with incomplete applications or customers who need help getting through the process.

Land use

“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”

ORS 197.180, OAR 660-030

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

Goal	Title
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5	Open Spaces, Scenic and Historic Areas, and Natural Resources
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6	Air, Water and Land Resources Quality
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11	Public Facilities and Services
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16	Estuarial resources
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19	Ocean Resources
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- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules would significantly affect land use. If yes, how would DEQ:
 - Comply with statewide land-use goals, and
 - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the proposed rules identified as “land use” under the 'Chapter 340 Action' on page 6 affect Issuance of Onsite Sewage Disposal Permits, which is an existing rule that is considered a land use program in the DEQ State Agency Coordination Program. Statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules.

DEQ proposes modifying Division 018 for onsite sewage disposal permits to limit land use compatibility statements for situations that affect land use for new construction and for a new structure and system alterations and authorization notices for existing structures. Repair permits are for existing structures where no change in use is being proposed and the land use compatibility statement requirement adds time and costs to the property owner.

Stakeholder and public involvement

Advisory committee

DEQ convened the standing nine-member Onsite Technical Review Committee, established in 1995 under OAR 340-071-0115. The committee met Aug. 28, 2013 and made recommendations on the fiscal impacts, including impacts on small businesses, of this rulemaking. Committee members include onsite program experts, such as installers, pumpers, maintenance providers and manufacturers who represent diverse areas of the state. The committee followed the 2009 committee recommendations and met quarterly to work on the implementation of the 2009 recommendations.

Roster

Name	Representing
Ken Cote, REHS, Chair	Former Jackson County Sanitarian
Allison Blodig, Member	Manufacturer
Penny Dunlap, Member	Installer and ATT service provider
Tim Gray, Member	Installer
Brannon Lamp, REHS, Member	O2WA Board Member, Consultant and Designer
Erin O'Connell, REHS, Member	Columbia County Sanitarian
Chris Rhodaback, Member	Pumper and service provider
Rob von Rohr, PE, Member	Civil Engineer
Bill Zekan, REHS, Member	Former Lincoln County Sanitarian

The committee reviewed the fiscal impact statement, specifically impacts on small businesses.

EQC prior involvement

DEQ shares general rulemaking information with EQC through the annual DEQ Rulemaking Plan review and monthly status report. DEQ did not present additional information specific to this proposed rule revision beyond the annual rulemaking plan and the monthly rulemaking report.

Public notice

The October 2013 *Oregon Bulletin* published the Notice of Proposed Rulemaking with Hearing. DEQ also:

- Posted notice on DEQ's webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on Sept. 20, 2013.
- E-mailed notice Sept. 30, 2013, to:
 - Approximately 3,100 interested parties through GovDelivery.
 - Members of the 2009 onsite advisory committee.
 - Members of the technical review committee.
- Emailed notice Oct. 8, 2013, to the following key legislators required under ORS 183.335:
 - Senator Chris Edwards, Ways and Means Natural Resources subcommittee chair, committee.

- Representative Ben Unger, Ways and Means Natural Resources subcommittee co-chair.

Public hearings and comment

DEQ held five public hearings simultaneously via teleconference call in Eugene, Medford, Bend, Pendleton and Portland with DEQ staff in each location. The comment period closed Oct. 18, 2013, at 5 p.m. DEQ received comments from nine individuals. 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.

Presiding Officers' record

The presiding officer summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked that anyone wanting to present verbal comments to complete, sign and submit a registration form. The presiding officer adjourned the hearing 20 minutes because no members of the public attended the hearing.

In accordance with [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#). Because no members of the public attended the hearing, there were no questions from attendees.

Because there were no attendees at the hearing, there is no attendees list to add to DEQ's interested parties list for this rule or to the commenter section of this staff report.

Close of public comment period

The comment period closed Oct. 18, 2013, at 5 p.m.

	Hearing 1	Hearing 2	Hearing 3
Date	Oct. 15, 2013	Oct. 15, 2013	Oct. 15, 2013
Time	4:00 p.m.	4:00 p.m.	4:00 p.m.
Address line 1	165 E. 7th Ave.	221 Stewart Ave.	475 NE Bellevue
Address line 2	Willamette Conference Room	Suite 201	Suite 110
City	Eugene	Medford	Bend
Presiding officer	DEQ Staff	DEQ Staff	DEQ Staff
Staff presenter	DEQ Staff	DEQ Staff	DEQ Staff

	Hearing 4	Hearing 5
Date	Oct. 15, 2013	Oct. 15, 2013
Time	4:00 PM	4:00 PM
Address line 1	700 SE Emigrant	811 SW Sixth Avenue
Address line 2	1st Floor	10th Floor
City	Pendleton	Portland
Presiding officer	DEQ Staff	DEQ Staff
Staff presenter	DEQ Staff	DEQ Staff

Summary of comments and DEQ responses

The table below organizes comments into 10 categories with cross references to the commenter number. DEQ's response follows the summary. Original comments are on file with DEQ.

- | | | |
|---|----------------|--|
| 1 | Comment | <p>OAR 340-071-0140 – Opposed to increasing fees, as it will create further hardship for rural Oregonians. This is a tax, not a fee for service.</p> <p>DEQ received two comments in this category from commenters #1 and #2 listed in the <i>Commenter</i> section below.</p> |
| | Response | <p>DEQ acknowledges that fee increases may represent a hardship to residents and small businesses. Other options have been explored and staff reductions of almost 50 percent have occurred in the last four years to help balance the budget. These cuts have not been enough to balance the budget and further cuts would continue to erode DEQ's ability to fulfill its obligations for implementing this program.</p> <p>DEQ finalized the agency budget for the governor's consideration August 2012. A fee-based program has to forecast what property development will look like over a three-year span. Rural property development has been particularly flat and so far this biennium, the forecast is accurate. These fee increases are needed to address rising costs combined with the continued low application levels.</p> <p>Most of DEQ's customers are new to what they need to provide with a complete application. Support staff in Pendleton, Medford and Coos Bay help customers submit everything that is needed to complete their applications. Having offices in our rural areas where customers live helps customers through the process, which protects public health and the environment. Without the fee increases, DEQ would reduce local support and funnel all applications to one location. Part of these fee increases are needed to maintain services in rural counties where DEQ is administering the onsite program.</p> |
| 2 | Comment | <p>OAR 340-071-0140 – Concern that license fee increase is only for licensed pumpers. It should be for both installers and pumpers as there are enforcement actions for both categories.</p> <p>DEQ received one comment in this category from commenter #3 listed in the <i>Commenter</i> section below.</p> |
| | Response | <p>The license fee increase would affect all licensees. However, there is an additional license fee for those pumpers that have more than one pumper truck. No changes have been made as a result of this comment.</p> |
| 3 | Comment | <p>Letter of support for proposed amendments for Division 018 and 071 to maintain at least the current service levels. Current service levels are inadequate to protect public health. Also, Requests EQC bring legislation to 2014 session for a grant/loan program for low income property owners to be able to make repairs or replace systems as needed.</p> <p>DEQ received one comment in this category from commenter #4 listed in the <i>Commenter</i> section below.</p> |
| | Response | <p>Support for the amendments is appreciated. No changes were made in response to this comment.</p> |

- 4 **Comment** OAR 340-071-0131 – The proposed rule amendments were eliminated and that is unfortunate. Time of transfer evaluations are effective in identifying problem onsite systems, and can be a successful tool in preventing untreated sewage discharges and protect public health.
- DEQ received one comment in this category from commenter #5 listed in the *Commenter* section below.
- Response A mandatory program had clear opposition from the real estate community and some legislators. That opposition, along with Ballot Measure 79 that passed in November 2012 required DEQ to consider a different approach. The realtors worked with DEQ to pass House Bill 3172 that added septic system-specific questions to the real estate disclosure statement that takes effect in January, 2014. Also, DEQ developed educational materials and provided training to the real estate community. No changes were made in response to this comment.
- 5 **Comment** OAR 340-071-0345 – New rule amendments don't specifically address the methodology used to implement the in-field testing and evaluation program for ATTs. A successful in-field technology verification program will greatly reduce the number of poorly-functioning treatment systems and protect the waters and public health in Oregon.
- DEQ received one comment in this category from commenter #5 listed in the *Commenter* section below.
- Response This comment is correct. The implementation of the rule will be implemented with DEQ's lab sampling various technologies and will be funded by annual fees paid by manufacturers included in this rulemaking package. The lab is aware of this upcoming plan and will continue to work with us in developing a sampling strategy to implement a performance verification program, which will begin in 2016. No changes were made in response to this comment.
- 6 **Comment** OAR 340-071-0135 – Commenter proposed rule language that would ensure oversight by a certifying body that would audit the facility to ensure what is being sold is what was tested. Also suggested including a standard (ISO/EIC 17025) that addresses quality control of the lab/testing facility.
- DEQ received one comment in this category from commenter #6 listed in the *Commenter* section below.
- Response The advisory committee that met in 2009 made recommendations to remove the requirement for ongoing certification of ATTs. They felt the cost associated with third-party audits could be better utilized instead with manufacturers submitting annual reports and performance testing of installed units. A change to the rules was made to include the quality control component per the comment.
- 7 **Comment** OAR 340-071-0345 – Commenter proposed language to ensure oversight by a certifying body that would audit the facility to ensure what is being sold is what was tested.
- DEQ received one comment in this category from commenter #6 in the *Commenter* section below.
- Response The advisory committee that met in 2009 made recommendations to remove the requirement for ongoing certification of ATTs. They felt the cost associated with

third-party audits could be better utilized instead with manufacturers submitting annual reports and performance testing of installed units. No changes have been made in response to this comment.

- 8 **Comment** OAR 340-071-0345 lists NSF/ANSI Standards that have since been updated and the rules should list the updated versions.

DEQ received one comment in this category from commenter #6 listed in the *Commenter* section below.

Response Updated versions have been inserted into the rule as suggested.

- 9 **Comment** OAR 340-071-0295 – Commenter proposed rule edit allowing 12 inches of sand when sand filter receives treated effluent. Variances have been approved in the past with 12 inches of sand and they work fine.

DEQ received one comment in this category from commenter # 7 listed in the *Commenter* section below.

Response The proposed rule change is reducing the sand filter size for a residence from 360 square feet to 250 square feet in consideration of the higher quality effluent. The comment did not support further reducing the depth of sand from 24 to 12 inches and DEQ could not obtain documentation to support the reduction of sand depth. No changes were made in response to this comment.

- 10 **Comment** Typos found in four sections: OAR 340-071-0135(5)(c) has an extra ‘and’, 340-071-0140(7) lists a ‘time of transfer application’ that is not part of this proposal and 340-071-0600(13) skips (e) and goes from (d) to (f).

Conformance with Secretary of State recommendations for rule language and the conventions used in other rules in division 071 should match. Change “section 0130(23)” to “OAR 340-071-0130(23)” in OAR 340-071-0275, 0290, 0302 and 0345.

DEQ received two comments in this category from commenters #8 and #9 listed in the *Commenter* section below.

Response The corrections have been made as suggested.

Commenters

Comments received by close of public comment period

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

- 1 **Commenter** Patrick Murphy
Organization None listed

This commenter submitted comments under category #1 in the *Summary of comments and DEQ responses* section above.

- 2 **Commenter** John Huddle
Organization None listed

- This commenter submitted comments under category #1 in the *Summary of comments and DEQ responses* section above.
- 3 **Commenter** Robert Barnes
Organization King's Pumping Service
- This commenter submitted comments under category #2 in the *Summary of comments and DEQ responses* section above.
- 4 **Commenter** Robin Wisdom, President and Peggy Lynch, Natural Resources Coordinator
Organization League of Women Voters of Oregon
- This commenter submitted comments under category #3 in the *Summary of comments and DEQ responses* section above.
- 5 **Commenter** Joseph Soulia, Government Relations Representative
Organization Orenco Systems, Inc.
- This commenter submitted comments under categories #4, #5 in the *Summary of comments and DEQ responses* section above.
- 6 **Commenter** Thomas Bruursema, Manager of Environmental and Sustainability Services
Organization NSF International
- This commenter submitted comments under categories #6, #7, #8 in the *Summary of comments and DEQ responses* section above.
- 7 **Commenter** Steve Wert
Organization None listed
- This commenter submitted comments under category #9 in the *Summary of comments and DEQ responses* section above.
- 8 **Commenter** Jan Heron, Environmental Health Specialist
Organization Linn County Environmental Health Department
- This commenter submitted comments under category #10 in the *Summary of comments and DEQ responses* section above.
- 9 **Commenter** Larry Knudsen, Senior Assistant Attorney General
Organization Oregon Department of Justice
- This commenter submitted comments under category #10 in the *Summary of comments and DEQ responses* section above.

Implementation

Notification

If approved, the proposed rules would become effective Jan. 2, 2014. DEQ would notify affected parties by e-mail, update the DEQ webpage for septic systems and notify the Oregon Onsite Wastewater Association.

Existing System Evaluations

- Affected parties – DEQ has filled a limited-duration position to train realtors and develop outreach materials on septic system evaluations.
- DEQ staff – DEQ has hired staff to implement this rule who is reaching out to realtors and providing information to realtors and the public on the rule requirements.

Measuring and reporting

- Affected parties – DEQ has notified manufacturers affected by the proposed alternative treatment technology rules of the proposed changes and will provide instructions on compliance. The local permitting office will notify property owners who apply for sand filter/pressurized distribution systems of the need for contracting for maintenance.
- DEQ staff – DEQ staff will begin receiving annual reports from manufacturers beginning in 2016 and will receive training and forms.

Systems

- Website - The website will need to have the fee tables updated and an updated version of the rules to replace the current version. The onsite homepage will be updated to announce the changes that occur.
- Database – The WQOnsite and WQSYS databases need to be updated to reflect new fees and fee increases. IT staff have been notified.

Five-year review

Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date 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

The following APA exemptions from the five-year rule review apply to all of the proposed rules:

- Amendments or repeal of a rule. ORS 183.405 (4)

- Rules adopted to implement legislatively approved fee changes. ORS 183.405(5)(c)
- Rules adopted to correct errors or omissions. ORS 183.405(d)