

State of Oregon
Department of Environmental Quality

Memorandum

Date: Aug. 03, 2011

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda Item E, Rule Repeal: underground storage tank soil matrix registration and licensing requirements, Oregon Administrative Rule Chapter 340, Division 162
Aug. 25, 2011, EQC Meeting

Why this is important The registration and licensing requirements for underground storage tank soil matrix cleanup service providers and supervisors are outdated and no longer necessary to protect human health and the environment.

DEQ recommendation and EQC motion DEQ recommends that the Oregon Environmental Quality Commission repeal Division 162 as seen in attachment A of this staff report.

Background and need for rulemaking In 1989, DEQ adopted the soil matrix cleanup rules under Chapter 340, Division 122 to address simple underground storage tank cleanups at regulated sites where groundwater was not affected. At that time, soil sampling requirements were new and qualified contractors and employees scarce, creating the need to set criteria and standards and license businesses and individuals who performed these simple cleanups. Underground storage tank decommissionings were traditionally performed by excavation contractors who were unfamiliar with the new environmental regulations and lacked the knowledge, training and experience to conduct cleanups and protect themselves and the public from exposure to contaminants.

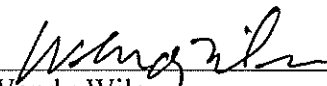
DEQ developed its soil matrix registration and licensing program in 1990 to protect the environment, the public and the health and safety of the contractors. Prior to the soil matrix rules, contractors commonly removed tanks by simply digging up the contaminated soil around the tanks until they could no longer see or smell any petroleum.

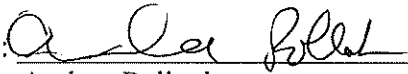
Now, most cleanup work is performed using comprehensive risk-based standards. In addition, the environmental consulting and contracting fields are now well developed and the cleanup requirements mainstream.

As a result, licensing contractors to perform soil matrix cleanups is no longer needed to protect human health and the environment.

Effect of rule	The proposed rule repeal would eliminate license categories and associated fees that are no longer relevant. DEQ estimates that repealing Division 162 will save licensees a total of over \$50,000 in license and testing fees.
Commission authority	The commission has authority to take this action under ORS 468.020, 465.200 through 465.320, 466.706 through 466.995
Key issues	Due to the nature of this rulemaking, no key issues were raised.
Public outreach	<p>DEQ discussed this proposal with a number of potentially affected parties who supported repealing the registration and licensing requirements for soil matrix service providers and supervisors under Oregon Administrative Rules, Chapter 340, Division 162.</p> <p>The Summary of Public Comment and Agency Responses is outlined in Attachment B.</p>
Next steps	If the proposed rules are repealed, DEQ will file the rule record with the Oregon Secretary of State to become effective on Sept. 1, 2011.
Attachments	<ul style="list-style-type: none">A. Proposed rules (redline)B. Summary of Public Comment and Agency ResponsesC. Relationship to Federal Requirements questionsD. Statement of Need and Fiscal and Economic ImpactE. Land use evaluation statement
Available upon request	<ul style="list-style-type: none">1. Legal Notice of Hearing2. Proposed Rulemaking Announcement

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DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 162

REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SOIL MATRIX

CLEANUP SERVICE PROVIDERS AND SUPERVISORS

340-162-0005

Authority, Purpose, and Scope

(1) These rules are promulgated in accordance with and under the authority of ORS 466.750.

(2) The purpose of these rules is to provide for the regulation of firms and persons who cleanup soil contamination resulting from spills and releases of oil from underground storage tanks utilizing the soil matrix standards in OAR 340-122-0205 to 340-122-0360. These rules establish standards for:

(a) Licensing of firms performing underground storage tank soil matrix cleanup services for underground storage tanks;

(b) Examination, qualification and licensing of individuals who supervise soil matrix cleanup services for underground storage tanks;

(c) Administration and enforcement of these rules by the Department.

(3) Scope:

(a) OAR 340-162-0005 through 340-162-0150 applies to the cleanup by any person of soil contamination resulting from spills and releases of oil from underground storage tanks regulated by ORS 466.706 through 466.835 and 466.895 through 466.995 and OAR chapter 340, division 150;

(b) OAR 340-162-0005 through 340-162-0150 do not apply to services performed by the tank owner, property owner or permittee.

(4) Service Providers and Supervisors licensed under this Division are also licensed to perform work under OAR chapter 340, division 163 — Registration and Licensing Requirements for Heating Oil Tank Soil Matrix Cleanup Service Providers and Supervisors.

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-162-0010

Definitions

As used in these rules:

(1) ~~"Commission" means the Environmental Quality Commission.~~

(2) ~~"Closure" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.~~

(3) ~~"Department" means the Oregon Department of Environmental Quality.~~

(4) ~~"Director" means the Director of the Oregon Department of Environmental Quality.~~

(5) ~~"Facility" means the location at which underground storage tanks are in place or will be placed. A facility encompasses the entire property contiguous to the underground storage tanks that is associated with the use of the tanks.~~

(6) ~~"Fee" means a fixed charge or service charge.~~

(7) ~~"Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorship, engaged in the performance of tank services.~~

(8) ~~"Licensed" means that a firm or an individual with supervisory responsibility for the performance of tank services has met the Department's experience and qualification requirements to offer or perform services related to underground storage tanks and has been issued a license by the Department to perform those services.~~

(9) ~~"Oil" means gasoline, crude oil, fuel oil, diesel oil, lubrication oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.~~

(10) ~~"Permittee", as used in this section, has the meaning set forth in ORS 466.706(15).~~

(11) ~~"Soil Matrix Cleanup" means action taken to comply with OAR 340-122-0205 through 340-122-0360.~~

(12) ~~"Supervisor" means a licensed individual operating alone or employed by a contractor and charged with the responsibility to direct and oversee the performance of tank services at a facility.~~

~~(13) "Tank" means underground storage tank.~~

~~(14) "Tank Services" include but are not limited to soil cleanup.~~

~~(15) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on regulated underground storage tanks.~~

~~(16) "Underground Storage Tank" or "UST" means an underground storage tank as defined in OAR chapter 340, division 150.~~

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 466.706 & 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-162-0020

General Provisions

~~(1) After January 1, 1991, no firm shall offer underground storage tank soil matrix cleanup services without first having obtained a license from the Department.~~

~~(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.~~

~~(3) After January 1, 1991, Underground Storage Tank Soil Matrix Cleanup Service Providers licensed to perform cleanup services are prohibited from offering or performing cleanup services on regulated underground storage tanks unless an underground storage tank has been issued a permit by the department.~~

~~(4) Any Underground Storage Tank Soil Matrix Cleanup Service Provider licensed or certified by the Department under the provisions of these rules shall:~~

~~(a) Comply with the appropriate provisions of OAR 340-162-0005 through 340-162-0150;~~

~~(b) Comply with the appropriate provisions of OAR 340-122-0205 through 340-122-0360;~~

~~(c) Maintain a current address on file with the Department; and~~

~~(d) Perform underground storage tank soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.~~

~~(5) A firm licensed to perform underground storage tank soil matrix cleanup services must submit a checklist to the department following the completion of a soil matrix cleanup. the checklist form will be made available by the Department.~~

~~(6) After January 1, 1991, a licensed underground storage tank soil matrix cleanup services supervisor shall be present at a tank site when the following tasks are being performed:~~

~~(a) During all excavations made after a leak is suspected or has been confirmed;~~

~~(b) When any tanks or lines are removed or decommissioned as a result of a suspected or confirmed release;~~

~~(c) When all soil and/or water samples are collected, stored, and packed for shipping to the analytical testing laboratory;~~

~~(d) When any soil borings, back hoe pits or other excavations are made for the purpose of investigating the extent of contamination;~~

~~(e) During removal from the open excavation or disposal of any free product or groundwater; and~~

~~(7) After January 1, 1991 Underground Storage Tank Soil Matrix Service Providers shall not backfill or close a soil matrix cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.~~

~~**NOTE:** Additional Oregon licenses may be required when performing soil cleanup services at underground storage tanks and heating oil tanks. See Construction Contractor License requirements in OAR 812-003-0100 through 812-002-0450 and Monitoring Well Constructor License requirements in OAR 690-240-0055 through 690-240-0070.~~

Stat. Auth.: ORS 465.200 - 465.320 & 466.706 - 466.995

Stats. Implemented: ORS 466.706 & 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-162-0025

Types of Licenses

~~(1) The Department may issue the following types of licenses:~~

~~(a) Underground Storage Tank Soil Matrix Cleanup Services Provider;~~

~~(b) Underground Storage Tank Soil Matrix Cleanup Services Supervisor.~~

~~(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995
Stats. Implemented: ORS 466.750
Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90

340-162-0030

Licensing of Tank Services Providers

~~(1) After September 1, 1990, firms providing Undergrounds Storage tank soil matrix cleanup services may apply for an Underground Storage Tank soil matrix cleanup services provider license from the Department.~~

~~(2) Licensing shall be accomplished by:~~

~~(a) Completing a license application provided by the Department; or~~

~~(b) Submitting the following information to the Department:~~

~~(A) The name, address and telephone number of the firm;~~

~~(B) The nature of the services to be offered;~~

~~(C) A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm;~~

~~(D) Identifying the names of employees or principals responsible for on-site project supervision; and~~

~~(E) Remitting the required license fee.~~

~~(3) The Department will review the application for completeness. If the application is incomplete, the department shall notify the applicant in writing of the deficiencies within 30 days.~~

~~(4) The Department shall deny, in writing, a license to a Soil Matrix Cleanup Services Provider who has not satisfied the license application requirements.~~

~~(5) The Department shall issue a license to the applicant after the application is approved.~~

~~(6) The Department shall grant a license for a period of 24 months.~~

~~(7) Renewals:~~

~~(a) License renewals, or re-examinations, must be applied for in the same manner as is required for an initial license;~~

~~(b) The complete renewal application shall be submitted no later than 30 days prior to the expiration date.~~

~~(8) Suspension or Revocation:~~

~~(a) The Department may suspend or revoke a license if the tank services provider:~~

~~(A) Fraudulently obtains or attempts to obtain a license;~~

~~(B) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission;~~

~~(C) Fails to meet any applicable state or federal standard relating to the service performed under the license;~~

~~(D) Fails to employ and designate a licensed supervisor for each project.~~

~~(b) An Underground Storage Tank Soil Matrix Cleanup Services Provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.~~

~~(9) In the event an Underground Storage Tank Soil Matrix Cleanup Services Provider no longer employs an underground storage tank soil matrix licensed supervisor, the cleanup services provider must stop work. Work shall not start until a licensed Underground Storage Tank Soil Matrix Cleanup Supervisor is again employed by the provider and written notice of the hiring of a licensed Underground Storage Tank Soil Matrix Cleanup Supervisor is received by the Department.~~

Stat. Auth.: ORS 466.706 - ORS 466.895 & ORS 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90

~~**340-162-0035**~~

~~**Supervisor Examination and Licensing**~~

~~(1) To obtain a license from the Department to supervise underground storage tank soil matrix cleanup services an individual must:~~

~~(a) Take and pass a qualifying examination approved by the Department; or~~

~~(b) Meet the requirements for licensing by reciprocity by providing proof, acceptable to the Department. The applicant must:~~

~~(A) Successfully pass an equivalent supervisors examination in another jurisdiction; and~~

~~(B) Demonstrate knowledge of applicable Oregon rules and regulations.~~

~~(2) Applications for Underground Storage Tank Soil Matrix Cleanup Supervisor Licenses—
General Requirements:~~

~~(a) Applications must be submitted to the Department within 30 days of passing the qualifying examination;~~

~~(b) Application shall be submitted on forms provided by the Department and shall be accompanied by the appropriate fee.~~

~~(3) The application to be a Licensed Underground Storage Tank Soil Matrix Cleanup Supervisor shall include:~~

~~(a) Documentation that the applicant has successfully passed the Underground Storage Tank Soil Matrix Cleanup Supervisor examination;~~

~~(b) Any additional information that the Department may require.~~

~~(4) A license is valid for a period of twenty four (24) months after the date of issue.~~

~~(5) License renewals must be applied for in the same manner as the application for the original license, including re-examination.~~

~~(6) Suspension and Revocation:~~

~~(a) The Department may suspend or revoke an Underground Storage Tank Soil Matrix Cleanup Supervisor's license for failure to comply with any state or federal rule or regulation of underground storage tanks;~~

~~(b) If a Soil Matrix Cleanup Supervisor's license is revoked, an individual may not apply for another supervisor license prior to 90 days after the revocation date.~~

~~(7) Upon issuance of an Underground Storage Tank soil Matrix Cleanup Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.~~

~~(8) The supervisor's license identification card shall be available for inspection at each site.~~

Stat. Auth.: ORS 465.200 - ORS 465.320 & ORS 466.706 - ORS 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91

340-162-0040

Examination Schedule

~~To apply for a license from the department to supervise soil matrix cleanups, an individual must take and pass a qualifying examination approved by the department.~~

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

~~340-162-0150~~

Fees

~~(1) Fees shall be assessed to provide revenues to operate the underground storage tank soil matrix cleanup services licensing program. Fees are assessed for the following:~~

~~(a) Underground Storage Tank Soil Matrix Cleanup Service Provider;~~

~~(b) Underground Storage Tank Soil Matrix Cleanup Supervisors License;~~

~~(c) Underground Storage Tank Soil Matrix Cleanup Examination Study Guides.~~

~~(2) Underground Storage Tank Soil Matrix Cleanup service providers shall pay a non-refundable license application fee of \$600 for a 24 month license.~~

~~(3) Individuals seeking to obtain an underground storage tank soil matrix cleanup supervisor's license shall pay a non-refundable license application fee of \$150 for a 24 month license.~~

~~(4) Examination study guides shall be made available to the public for the cost of production.~~

~~(5) Replacement licenses will be provided by the department for a fee of \$10.~~

Stat. Auth.: ORS 465.200 - 465.320 & 466.706 - 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

Summary of Public Comment and Agency Response

UST Soil Matrix Registration and Licensing Requirements, Chapter 340, Division 162 - repeal:

Prepared by: Mitch Scheel

Date: August 5, 2011

**Comment
period**

The public comment period opened July 14, 2011 and closed at 5 p.m. on Aug. 5, 2011. DEQ extended the period by one week from July 29, 2011, to allow people notified through the Aug. 1 Bulletin of the opportunity to comment. No public hearings were held and no public comments were received.

**Organization
of comments
and
responses**

Summaries of individual comments and DEQ's responses are provided below. Comments are summarized in categories. People who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.

<i>Summary of Comments and Agency Responses</i>	
<i>Comment 1</i>	
<i>Response</i>	

<i>Comment 2</i>	
<i>Response</i>	

<i>List of Commenters and Reference Numbers</i>				
Reference Number	Name	Organization	Address	Date on comments



State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION

**Underground Storage Tank Soil Matrix Cleanup Service Provider and Supervisor
Licensing Categories - repeal**

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

There are no federal regulations or requirements applicable to the UST Soil Matrix Licensing Rules that are the subject of this repeal.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

Not applicable.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

Not applicable.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Underground Storage Tank Soil Matrix Cleanup Service Provider and Supervisor Licensing Categories - repeal

This form accompanies a Notice of Proposed Rulemaking

Title of proposed rulemaking	UST Soil Matrix Registration and Licensing Requirements, Chapter 340, Division 162 - repeal
Statutory authority or other legal authority	468.020, ORS 465.200 through 465.320, 466.706 through 466.995
Statutes implemented	ORS 466.750
Need for the rule(s)	The proposed repeal of Registration and Licensing Requirements for Soil Matrix Service Providers and Supervisors rules under Oregon Administrative Rules, Chapter 340, Division 162 would eliminate outdated registration and licensing requirements. Underground storage tank cleanups have evolved into mostly risk-based evaluations conducted by professionals such as registered geologists or professional engineers. Soil matrix cleanup rules are still a valid option for simple cleanups where groundwater is not impacted, however, licensing people who perform these simple cleanups is no longer necessary as the environmental rules and regulations (e.g., soil sampling) are well-known.
Documents relied upon for rulemaking	DEQ relied on the Oregon Administrative Rules, Chapter 340, Division 162 to develop this proposal.
Requests for other options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	<p>The repeal of the Soil Matrix Registration and Licensing Requirements will have a positive economic impact on licensees by saving them over \$50,000 in license and testing fees.</p> <ul style="list-style-type: none"> • There are currently 46 <i>UST Soil Matrix Cleanup Service Providers</i> employing 105 <i>UST Soil Matrix Supervisors</i>. • The <i>UST Soil Matrix Cleanup Service Provider License</i> is for businesses performing soil matrix cleanup services at regulated tank sites. The two-year license fee is \$600. • The <i>UST Soil Matrix Cleanup Supervisor License</i> is for individuals performing soil matrix cleanups. Supervisors must demonstrate their knowledge of the rules by passing a qualifying examination given by the International Code Council through a professional testing company. The examination cost is \$70 and the two-year license fee is \$150.
Impacts on the General Public	There is no direct economic impact on the general public as a result of the proposed rule repeal.

Impacts to Small Business (50 or fewer employees – ORS183.310(10))	There is no direct economic impact on small businesses as a result of the proposed rule repeal unless the small business has a Soil Matrix Cleanup Service Provider License. See <i>Fiscal and Economic Impact, Statement of Cost Compliance Overview</i> above.	
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	There are currently 46 <i>UST Soil Matrix Cleanup Service Providers</i> employing 105 <i>UST Soil Matrix Supervisors</i> . DEQ assumed the majority of these businesses employ 50 or fewer employees.
	b) Types of businesses and industries with small businesses subject to the proposed rule	Environmental consulting and remediation companies that have licenses as a UST Soil Matrix Cleanup Service Provider are subject to the existing rules.
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	There are no reporting, recordkeeping or other administrative activities associated with this proposed rule repeal.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	There is no equipment, supplies, labor or increased administration required by small businesses to comply with the proposed rule repeal.
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	DEQ informed the Soil Matrix Licensees through a mailing in December 2010 announcing the proposed deletion of the licensing rules. To date, no licensees have objected to repeal of the requirements.
Impacts on Large Business (all businesses that are not “small businesses” under ORS183.310(10))	There is no direct economic impact on large businesses as a result of the proposed rule repeal unless the large business possesses a Soil Matrix Cleanup Service Provider License. See <i>Fiscal and Economic Impact, Statement of Cost Compliance Overview</i> above.	
Impacts on Local Government	There is no direct economic impact on local governments as a result of the proposed rule repeal.	
Impacts on State Agencies other than DEQ	There is no direct economic impact on state agencies other than DEQ as a result of the proposed rule repeal.	
Impacts on DEQ	Impacts to DEQ will be a savings in administrative resources as license fee payments will no longer have to be processed and tracked by the Revenue Section and licenses will no longer have to be issued.	
Assumptions	DEQ based its assumptions on fees associated with the repeal of the UST Soil Matrix Licensing Rules. See <i>Fiscal and Economic Impact, Statement of Cost Compliance Overview</i> above.	
Housing Costs	DEQ determined this proposed rulemaking would have no effect on the cost of development of	

	a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
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<< as signed >>
Prepared by

Mitch Scheel
Printed name

7-07-11
Date

<< as signed >>
Approved by DEQ Budget Office

Jim Harris
Printed name

7-07-11
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
UST Soil Matrix Registration and Licensing Requirements, Chapter 340, Division 162 - repeal

RULE CAPTION

**Underground Storage Tank Soil Matrix Cleanup Service Provider and Supervisor
Licensing Categories - repeal**

1. Explain the purpose of the proposed rules.

Chapter 340, Division 162, *Registration and Licensing Requirements for Underground Storage Tank Soil Matrix Cleanup Service Providers and Supervisors*, became effective in 1990 to regulate those performing simple Soil Matrix Cleanups under the division 122 Soil Matrix rules when UST cleanups were new. Over the last 20 years, assessment and remediation activities have evolved to the point where the protection provided by registering and licensing of contractors performing work under division 162 is no longer necessary to protect human health and the environment.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes___ No x

a. If yes, identify existing program/rule/activity:

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes___ No___ (if no, explain):

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The UST Soil Matrix Licensing rules have not previously been identified as a program affecting land use and their repeal would not cause DEQ to change its determination regarding land use.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable.

Summary of Public Comment and Agency Response

UST Soil Matrix Registration and Licensing Requirements, Chapter 340, Division 162 - repeal:

Prepared by: Mitch Scheel

Date: August 8, 2011

Comment period The public comment period opened July 14, 2011 and closed at 5 p.m. on Aug. 5, 2011. DEQ extended the period by one week from July 29, 2011, to allow people notified through the Aug. 1 Bulletin of the opportunity to comment. One commenter submitted written comments during this period.

Organization of comments and responses A summary of the comments and DEQ's response is provided below. Comments are summarized in categories. People who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.

Summary of Comments and Agency Responses	
Comment 1	<p>There are alternative cleanup standards that can be used to determine site closure and we understand that the soil matrix closure option is being used less and less. However, the soil matrix cleanup option still exists under DEQ rules, and remains the simplest site closure method available. This license requirement protects the public as well as business interests by ensuring such cleanups are conducted by well trained competent persons.</p> <p>ODOT has long required contractors removing petroleum contamination from our right of way, during construction and maintenance projects, to have a Soil Matrix Supervisors license, even if it is not known whether the petroleum contamination originated from underground storage tanks. Requiring contractors to have a Soil Matrix Supervisors license helps ODOT ensure that appropriate procedures are followed, regulatory requirements are met and the environment is protected. While a Registered Geologist or a Professional Engineer, with significant environmental experience, could also oversee such projects, using such professionals would significantly increase the cost of those projects. In addition, it is not possible to verify the amount of "environmental experience" any professional has claimed. Therefore, ODOT believes that repeal of this licensing requirement would result in greater risk to the environment resulting from our inability to verify the qualifications of contractors hired to remove contaminated soils, and higher costs, if we are forced to employ RGs or PEs to oversee such work.</p>
Response	<p>DEQ understands ODOT's concern regarding the potential increased costs associated with petroleum soil excavation projects. However, DEQ believes there are alternatives to requiring a Soil Matrix Supervisor license that would ensure this work is performed by qualified contractors including ODOT providing training or requiring their contractors have staff or subcontractors with an appropriate level of knowledge and experience to perform petroleum excavation projects.</p>



<i>List of Commenters and Reference Numbers</i>				
Reference Number	Name	Organization	Address	Date on comments
1	Jennie Armstrong	Oregon Dept. of Transportation	6000 SW Raab Road Portland, OR 97221	Aug. 5, 2001