



Oregon Department of Environmental Quality

# Rule Concept: Operation and Maintenance (O&M) Program

## Onsite Wastewater Management Program 2025

Date: Dec. 30, 2024

### Summary of Existing Rule

Oregon Administrative Rules (OARs), require that all Alternative Treatment Technology (ATT) onsite wastewater (septic) systems be maintained by a DEQ-certified maintenance provider. The same requirement exists for all sand filter and pressure distribution onsite septic systems permitted after Jan. 1, 2014. These higher treatment systems are often located on small lots, associated with challenging soils, or in sensitive environments, such as near water bodies or shallow water tables where the septic tank and drainfield alone cannot adequately treat the wastewater to be protective. As Oregon has grown in population over the past 50+ years, many of the easily developed parcels have already been developed. The remaining sites are increasingly challenging and require higher treatment systems that require regular maintenance in order to be developed. These types of systems are also used to repair failing or substandard systems on parcels developed prior to septic permitting and standards, which are often in locations that do not meet current siting requirements. The result is an increasing total number and overall percentage of onsite septic systems that require ongoing maintenance by a DEQ-certified maintenance provider.

Depending on the system design, these types of systems may have filters, blowers, pressurized pipes, ultraviolet (UV) lights, pumps, and tanks that accumulate solids. These system components need service or replacement to ensure expected system performance and to provide as clean a discharge as possible for a long time.

In addition to requiring property owners maintain service contracts over the life of the system, the existing rules require property owners submit an annual inspection report and evaluation fee to DEQ or their contract county agents, unless they are under contract with a DEQ-certified maintenance provider. The rules require maintenance providers to submit the annual inspection report and evaluation fee for each system under contract. The rules also outline what must be included in a service contract between a DEQ-certified maintenance provider and a property owner. It lists the responsibilities of a maintenance provider under contract, as well as the training and certification requirements for maintenance providers, and requires property owners report evidence of system malfunction or failure.

### Description of the Issue

The O&M sub-program, which implements and administers the rules regarding the use and maintenance of higher treatment systems, is complex. It involves property owners, tenants, maintenance providers, onsite septic system installers, educators, and regulators to work together to ensure these types of systems work as designed and provide the quality of wastewater treatment needed to protect public health and the environment.

#### Translation or other formats

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800-452-4011 | TTY: 711 | [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov)

The existing rules have not been updated substantially since the inception of the O&M sub-program in 2006, despite deficiencies in the rules being apparent early on in program development.

Every year the deficiencies are not addressed, the issues are compounded as the number of properties with these types of systems grows. The largest complaints about the rules are:

- a) Requirements governing operation and maintenance are spread throughout the entire division and not easy to find or read.
- b) There is not always agreement on the intent or implementation of the rule, such as the language around who is responsible for submitting the annual report and the fee: the property owner or the maintenance provider?
- c) The rules do not specify what minimum maintenance is required by the maintenance provider, so if a maintenance provider does not do the minimum maintenance required by the manufacturer it becomes a civil issue between the service provider and the property owner, instead of a compliance issue with DEQ.
- d) There is no penalty for late annual report or fee submittals; this is the primary mechanism for ensuring timely maintenance, proper operation, and compliance.
- e) There is no penalty for owners that do not maintain a service contract.
- f) Additional installation inspections are necessary for these types of systems, including a “start-up” inspection, which ensures the mechanical and electrical components of the system are powered on, installed properly, and set for anticipated flows, but this requirement is not explicitly called out in rule.
- g) Maintenance providers are not always aware when systems they are contracted to maintain are operational.
- h) Over time, contracts have included fixed terms with expiration dates, which was not the original intent of the program. This increases the amount of paperwork and time processing the paperwork for both maintenance providers and regulators.

Higher treatment systems are needed in order to be protective of public health and the environment while still supporting the demand for developable properties. Therefore, these issues with the program are critical to address to ensure the intent and purpose of the rules is achieved.

## **Revised Sections**

Changes are proposed to create a new section, OAR 340-071-0132, to compile existing operation and maintenance rules in one place and remove them from elsewhere in the document. Additional rules are proposed to be added to this new section to address housekeeping, minimum maintenance requirements, clarify who the responsible party is for submitting the annual report and fee, and include provisions addressing compliance penalties.

Changes are proposed to section OAR 340-071-0140 and 0260 to allow maintenance providers to conduct periodic inspections on behalf of the agent and permit the agent to charge compliance fees related to the O&M Program.

Changes are proposed to section OAR 340-071-0275, 0295, 302 and 0345 to require necessary inspections for alternative systems, including ATTs, Sand Filters, Recirculating Gravel Filters and Pressure Distribution systems.

## **Implications of Rule Changes**

- a) Finding information about rules governing the O&M program will be easier for everyone by having them compiled under one section, especially property owners and maintenance providers who are not accustomed to navigating OARs.
- b) The rules will be clear about the duty of maintenance providers to perform minimum maintenance on the systems they are contracted to do so and establish penalties when providers fail to do so. This will ensure that all maintenance providers provide minimum maintenance and ensure these higher

treatment systems are being adequately maintained to be protective of public health and the environment.

- c) The rules will clarify that the owners are responsible for maintaining a service contract for the life of the system and maintenance providers are responsible for submitting annual reports and fees with a few exceptions:
  - o Annual reports and fees are not required for new systems that became operational within the last six months of the reporting period because the first inspection is not due until the six-month mark;
  - o The maintenance provider was not under contract for the entirety of the reporting period, didn't conduct a maintenance inspection, and properly notified the regulator of the terminated contract; or
  - o The contract for an existing system is new within the last 60 days of the reporting period (currently November and December) and the maintenance provider was not able to conduct a maintenance inspection due to inclement weather or the property owner not providing them access.
- d) The updated rules will require that all service contracts must be ongoing contracts, which reduces the amount of paperwork for maintenance providers and regulators. Limited term contracts will no longer be accepted, which means regulators will only need to track initial, transferred, or new contracts after termination. Maintenance providers will only have to notify the regulator when a contract is terminated or if a new one is initiated or transferred.
- e) The proposed rule will specify that service contracts identify an effective date, which for new systems is typically the date the Certificate of Satisfactory Completion is issued or when the system is connected to plumbing, or the execution date for systems already in operation, so it's clear to everyone when the contract takes effect.
- f) Maintenance providers will have a term limit for how long they must maintain records of their current and past clients. They will also be required to maintain an inspection checklist in their records.
- g) The proposed rules require the maintenance provider to inform the regulator if a system they are maintaining is not properly functioning, not just if it requires a repair. This will allow the regulator to intervene if necessary to prevent maintenance issues turning into costly repair permits.
- h) Under the proposed rules, the owner must report a failing system to the maintenance provider in addition to the agent, to help close the communication loop between owner, agent, and maintenance provider.
- i) The proposed rules would allow a penalty to be assessed for owners that do not maintain a service contract for the entirety of the reporting period by giving the regulator the option of conducting a periodic inspection and charging them inspection and non-compliance fees.
- j) The proposed rules allow a penalty to be assessed for maintenance providers that do not submit annual reports and fees on time (or at all), by charging a non-compliance fee in addition to the annual reporting fee.
- k) Required inspections, which are common practice, are explicitly called out in the proposed rules for pressure distribution, ATT, and sand filter systems, including a "start-up" inspection that may be conducted by the contracted maintenance provider if the regulator approves and a start-up report is submitted. This would ensure that the maintenance provider is engaged before the Certificate of Satisfactory Completion is issued, closing a loophole where some maintenance providers are unaware of when a system under contract is placed into operation.
- l) The proposed rules address several "housekeeping" items, such as replacing terms with more accurate representations, and removing rules that conflict with one another, like requiring maintenance providers conduct repairs when they are not necessarily licensed to do repair work.

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