



# Draft Fiscal Impact Statement

## Three Basin Rule 2025

## Introduction

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

## Fee analysis

This rulemaking does not involve fees.

## Statement of fiscal and economic impact

### Fiscal and economic impact

The proposed rules will amend the Three Basin Rule to allow the Oregon Department of Environmental Quality to issue National Pollutant Discharge Elimination System permits for domestic sewage treatment plants under limited circumstances, while still preserving or improving the high-quality water. Under the current rules, DEQ is not allowed to issue new NPDES permits in the Clackamas, North Santiam and McKenzie River Basins. Due to the Supreme Court decision in *the County of Maui v. The Hawaii Wildlife Fund*, known as the Maui Decision, DEQ must issue NPDES permits to domestic sewage treatment facilities if DEQ finds that discharges from these facilities in the Three Basin area are “functionally equivalent” to direct discharges.

The primary impact of the proposed rule amendments is they would allow DEQ to issue an NPDES permit when it determines that a discharge of wastewater to the ground or groundwater is a functional equivalent to a direct discharge based on [internal guidance](#) developed since the *Maui* decision. Previously, such discharges received a Water Pollution Control Facility permit, which is for discharges to the ground or groundwater that are not a functional equivalent to a direct discharge. Without the revisions, domestic sewage treatment facilities would either be required to find a discharge option that is not a functional equivalent, which may be technically or financially infeasible, or would not have an option to treat and discharge wastewater. DEQ would not have a way to permit such discharges, even if doing so would benefit water quality compared to current operations.

Costs to local governments and businesses that operate domestic sewage treatment facilities may increase if they have been operating under a WPCF permit and must get an NPDES permit. NPDES permits may require more influent and effluent monitoring than WPCF permits. NPDES permits may also require receiving water monitoring, which WPCF permits may not require. There may be a need to do groundwater flow and fate and transport monitoring as a part of an NPDES permit application, which will require wastewater treatment facilities to obtain support from a consultant. In addition, permit application fees are slightly higher for NPDES permits than for WPCF permits. NPDES permits are renewed on a five-year basis instead of a 10-year basis for WPCF permits, which increase the frequency and cost of permit application fees to local governments and businesses that may be impacted by rule amendments.

Without the proposed rule amendments, costs to local governments and businesses that operate domestic sewage treatment facilities could be much higher, as they would need to find an option to dispose of treated wastewater in a way that would not require an NPDES permit. A facility seeking to replace or upgrade treatment might need to acquire land further away from a receiving water to construct a facility, apply treated wastewater to land, if available, transport treated wastewater offsite, or pump wastewater to another treatment

facility. Such options are likely more expensive and may not be affordable to communities and businesses that are subject to the rule. These costs likely outweigh increased monitoring and application costs resulting from proposed rule amendments.

DEQ is also proposing a minor revision to the Three Basin Rule that will allow operators of onsite septic systems to upgrade their systems without Environmental Quality Commission approval, as long as the system does not increase flow or waste strength. The current rule requires EQC approval for DEQ to issue such permits, even for straightforward repairs or replacement that result in improved pollutant removal. These revisions will lessen administrative burden of both communities served by these systems and DEQ staff, saving money and time and ensuring that onsite system repairs or replacements can be done sooner.

DEQ also is making minor non-substantive edits to improve clarity of certain Three Basin Rule provisions. These revisions will have no fiscal impact.

## **Statement of cost of compliance**

### **State agencies**

#### **DEQ**

The proposed rule amendments will impact DEQ by increasing the amount of time needed to issue permits to facilities that will require an NPDES permit rather than a WPCF permit. The NPDES permit issuance process is more complex than a WPCF permit. Moreover, the proposed rules have additional requirements for issuing NPDES permits in the Clackamas, North Santiam and McKenzie River Basins than in other parts of the state. These impacts include the following:

- WPCF permits typically have limits to ensure the discharge meets Groundwater Protection Requirements at OAR 340, Division 40. NPDES permits issued under the revised rules would have these limits, as well as limits that protect beneficial uses in the surface water. Development of such limits will require additional time for DEQ staff, particularly due to the indirect nature of impacts from a subsurface discharge. DEQ may need input from staff with expertise in hydrogeology to develop such limits. For most NPDES permits where treated wastewater is discharged directly to surface water, such expertise isn't needed.
- The proposed rule amendments state NPDES permits cannot result in more than a measurable lowering of water quality. DEQ will need to assess the impact of a proposed discharge on water quality. This assessment is very similar to what DEQ already does as part of antidegradation analysis for permits in other parts of the state, but will have more stringent requirements under the proposed rule amendments. Thus, the impact of this requirement on the workload of DEQ water quality permitting staff will be minimal.

The proposed rule amendments related to the Onsite Program would reduce the amount of time needed to issue WPCF-Onsite permits. The revisions would remove the requirement to obtain EQC approval when a facility proposes to repair or replace an onsite system with an improved system with no increase in flow or pollution strength. Resources necessary to issue new WPCF-Onsite permits for existing facilities currently subject to the Three Basin Rule would be decreased, thus reducing time and cost associated with the permitting process, both for DEQ and for applicants.

Non-substantive edits made for clarity and consistency will not impact DEQ's cost for implementing the Three Basin Rule.

## Other state agencies

The proposed rules may require DEQ to coordinate with other state agencies on a project specific basis, to ensure that decisions related to permitting do not impact resources or programs under their jurisdiction. The extent to which the rules would require additional coordination will be project-specific and thus cannot be quantified.

## Local governments

Five local government entities currently have a WPCF or WPCF-Onsite permit in the three basins to operate a domestic sewage treatment facility. The proposed rule will require local governments to obtain an NPDES permit when DEQ determines that a domestic sewage treatment's discharge is a functional equivalent to a direct discharge. Without the rule change, local governments may need to find a way to treat and discharge wastewater in a way that is not a functional equivalent to a direct discharge, which may be more expensive and may not be affordable, particularly to smaller communities that are subject to the Three Basin Rule. The exact costs are difficult to quantify, as they will vary case by case, but will likely be in the range of hundreds of thousands to millions of dollars.

If DEQ determines a discharge from a sewage treatment facility is likely to be a functional equivalent to a direct discharge, the facility will need to switch from a WPCF permit to a NPDES permit. An NPDES permit may require more monitoring than a WPCF permit, which will result in higher monitoring costs for the facility; however, these higher monitoring costs are minor compared to the costs of finding a treatment option that is not a functional equivalent. DEQ's analysis of additional monitoring costs is based on experience for a few facilities that have needed to switch from a WPCF to NPDES permit since DEQ developed its functional equivalence guidance. In some cases, the NPDES required the same monitoring as the WPCF permit, which was monthly monitoring of biological oxygen demand, total suspended solids, pH, bacteria, and ammonia. In another instance, more frequent sampling was required for these parameters. Based on DEQ's monitoring matrix for NPDES permits, monitoring frequency for these parameters may be as high as twice weekly for these parameters for a minor facility with a flow greater than 100,000 gallon per day but less than one million gallons per day.

The following is an estimate of additional monitoring costs that may be associated with switching from a WPCF to an NPDES permit. Based on quotes from commercial laboratories, analyses for a full suite of BOD<sub>5</sub>, TSS, bacteria, and ammonia and alkalinity ranges from \$260 to \$324 per sample. The cost of paying an employee to collect and document the sample, as well as to receive and report sampling results is assumed to be equal to the analytical cost. Switching from a WPCF to an NPDES permit may increase influent and effluent sampling from monthly to a maximum of twice weekly for a minor facility with greater than 100,000 gallons per day but less than one million gallons per day, an addition of 92 samples per year.<sup>1</sup> In some cases, as noted, monitoring and reporting costs will not increase. Based on twice weekly sampling for one influent and one effluent sample, annual monitoring costs under an NPDES permit as compared to a WPCF permit would be expected to increase by a maximum of \$96,000 to \$120,000 per year. If DEQ requires less frequent monitoring, cost increases would be less.

If there is evidence that metals or other toxic compounds are present in the permittee's discharge and are pollutants of concern, additional monitoring may be required for these analytes as well as whole effluent toxicity testing. At this time, DEQ does not expect any facilities in the three basins to have permits with routine monitoring for metals, toxic compounds (other than ammonia, alkalinity and nitrate, which are routinely required) not already listed, or whole effluent toxicity testing since monitoring for these analytes is typically only required for major permittees.

In addition, DEQ expects that any facility that needs to obtain an NPDES permit will need to hire a consultant to conduct groundwater contaminant fate and transport modeling to provide information for the functional

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<sup>1</sup> DEQ does not anticipate that any facility that may be affected by proposed revisions will have a design flow greater than one million gallons per day.

equivalency analysis and development of permit limits during permit development. Such costs will vary case by case.

The rule also may benefit local governments by allowing them to move forward on treatment upgrades that will remove additional pollutants in comparison to current treatment. Such upgrades may allow additional development in some communities subject to the rule while still protecting or improving water quality in comparison to current treatment.

Proposed revisions to the rule related to renewal of Onsite permits would benefit local governments that need to repair or replace systems without increasing flow or pollutant strength. These revisions would allow such dischargers to obtain permits without EQC approval, thus saving administrative costs for the facility.

Non-substantive editorial revisions to the rule will have no fiscal impact on local governments.

## **Public**

DEQ expects that the rule revisions will benefit the public. All other things being equal, it may be more expensive to comply with an NPDES than a WPCF permit. These costs would be transferred to the public through rate increases. However, such costs may be borne irrespective of rule revisions and may be even greater if DEQ did not adopt rule revisions due to the increased costs associated with treatment since a new NPDES permit would not be allowed. As a result, DEQ expects that proposed rule revisions will benefit the public as compared to the current rule, by allowing greater flexibility to wastewater treatment operators to find a feasible treatment option that still protects high quality water in the Clackamas, North Santiam and McKenzie basins.

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

Based on the best available information, three large businesses have permits to operate domestic sewage treatment systems in the area subject to the Three Basin Rule. These businesses may or may not be impacted by proposed rule revisions if DEQ determines that the discharge from their domestic sewage treatment is likely to be a functional equivalent, thus requiring an NPDES permit. These impacts are similar to the impacts that would be borne by local governments; refer to the "Local Government" section above.

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

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

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

DEQ estimates that there are currently 28 small businesses that operate wastewater treatment facilities that may be subject to the proposed revisions, including revisions that allow DEQ to issue NPDES permits and revisions to the Onsite provisions. Several of these facilities are mobile home or RV parks in the area that have WPCF or WPCF-Onsite permits. It also includes private businesses and non-profit organizations that operate domestic sewage treatment facilities, such as operators of wilderness camps or other small manufacturing operations. To the extent that any entities would require an NPDES permit, fiscal impacts would be similar to that of local governments that may require an NPDES permit.

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

If DEQ were to determine that a small business needs an NPDES permit, compliance with the rule would require increased monitoring, and reporting and recordkeeping activities associated with an NPDES permit.

Some small businesses who must get an NPDES permit may require a contractor to conduct groundwater modeling and collect and ship samples to a lab for analysis, and report sampling results to DEQ.

For small businesses that are repairing or replacing onsite systems that would no longer require EQC action, administrative costs related to coordinating with DEQ on the EQC process would decrease.

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

As noted, the proposed rule may require increased administration associated with implementation of an NPDES permit rather than a WPCF permit. Additional sample collection and reporting will require increased labor and potentially increased supplies associated with sampling. The proposed rule may or may not require additional projected equipment; small businesses seeking to upgrade their wastewater treatment systems may need to do so irrespective of the type of permit issued.

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

The advisory committee convened for this rulemaking included members from two groups that represent small businesses, including Oregon Business and Industry and the Oregon Onsite Wastewater Association. These groups were included to provide input from small businesses that might be impacted by the rule.

## Documents relied on for fiscal and economic impact

Document title	Document location
Water Quality Permitting Program Monitoring Matrix	Oregon DEQ 700 NE Multnomah St. Portland, OR 97232
Domestic NPDES and WPCF Individual Permits: Application, Annual and Modification Fees	<a href="#">OAR 340-045-0075, Table 70C</a>
Personal communication, Zach Mander to Aron Borok re: Analytical Cost Estimates for Three Basin Rule Fiscal Impact Statement, 6/27/2025	On request from DEQ

## Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an 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.

DEQ determined the proposed rules would have no effect on the development costs because these rules do not directly affect permitting or construction of housing. However, these rules may make it more likely for communities to increase the amount of housing in the Clackamas, North Santiam and McKenzie basins by providing a means to improve wastewater treatment in a way that has no measurable lowering of water quality.

## Racial equity

ORS 183.335(2)(a)(F) as amended by House Bill 2993, requires state agencies, when providing notice of a rulemaking, to provide a statement identifying how adoption, amendment or repeal of the proposed rules will affect racial equity in the state.

The proposed rules allow DEQ to issue an NPDES permit when necessary if a discharge from a domestic sewage treatment plant is functional equivalent based on the factors listed in the Supreme Court's Maui

decision. In many cases, because the rule will allow wastewater treatment system improvements, pollution levels will decrease compared to current levels. Without the authority to issue NPDES permits when necessary, certain communities will have no means to treat and discharge treated wastewater, or will have to find a means to do so that may be much more expensive. Overall, the proposed rules would likely have an overall benefit to community members by paving the way for wastewater treatment system improvements, while continuing to protect drinking water supplies for downstream populations.

At this time, DEQ has not identified any specific actions or outcomes from these proposed rules that would substantially burden any person or community based on the racial demographics of that person or community. DEQ considered impacts to racially diverse communities in the Willamette Valley that could be impacted if there are costs associated with removing pollutants from wastewater for drinking water. However, the rules are designed to ensure that high quality waters continue to meet levels needed to protect domestic water supplies; as a result, DEQ does not anticipate such impacts to occur to any communities.

## **Environmental justice considerations**

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

DEQ took the following steps during rulemaking in consideration of environmental justice. Public meetings and hearings were held in a virtual or hybrid setting so that members of the public could attend. DEQ appointed members to the rulemaking advisory committee who might have insight from an environmental justice perspective.

Overall, these draft rules ensure that rural communities in the Clackamas, North Santiam and McKenzie Basins are able to obtain the appropriate permit to treat and discharge wastewater. These permits will ensure that there is no more than a measurable lowering of surface water quality. In some cases, the rule may pave the way to economic development, because it will allow smaller communities to get improved wastewater treatment systems, which will remove more pollution than those currently in place. As a result, these communities can engage in economic development while not increasing pollutant levels in surface water compared to current levels by more than a measurable amount and still ensuring that receiving waters continue to protect public water supplies, aquatic life and recreation.

## **Non-discrimination statement**

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).