



State of Oregon Department of Environmental Quality

FTSS Program Fee Analysis

Fuel Tanks Seismic Stability 2023 Rulemaking Advisory Committee Meeting 4

This is a draft fee analysis developed by DEQ for the Fuel Tanks Seismic Stability Rulemaking. This document is being presented to the Rules Advisory Committee for discussion. The RAC's input will be reflected in the final version included in the public notice.

Purpose: Provide basis and options for DEQ FTSS program fees.

Program Summary:

SB1567 requires fuel storage facilities with the capacity to hold over two million gallons of fuel and located in Multnomah, Columbia and Lane counties perform earthquake damage risk assessments and develop and implement mitigation plans to minimize risk and protect health and safety of workers, residents of surrounding communities and environment. To do this, facilities must evaluate the site and equipment conditions and prepare engineering plans for modifications and/or emergency preparations necessary to minimize risk to health and safety of the employees and surrounding communities and the environment.

To implement these laws, DEQ must review the assessments provided by facilities and to review and approve the subsequent mitigation plans, submit a report to the Legislature and conduct ongoing compliance and enforcement measures.

Fiscal History:

The bill created the Seismic Risk Mitigation Fund and authorized DEQ to establish fees to cover the Department's costs of reviewing and approving seismic risk assessments and mitigation implementation plans. The fiscal analysis conducted for SB1567 established three permanent DEQ staff positions funded by public General Funds intended to coordinate implementation of the assessment and mitigation program. The analysis assumed fees would be collected from facility owners to contract with third party subject matter experts necessary to carry out the implementation of SB1567. Initial fees totaling \$1.7 million were estimated to be collected in the 23-25 biennium. An excerpt of the SB 1567 Fiscal Impact Analysis is included at bottom.

Schedule Assumptions:

DEQ estimates that the agency's work on this bill will occur in phases:

1. Rule development through EQC action (August 2022 September 2023).
2. Rule implementation: technical assistance and guidance for facilities; community outreach (October 2023 – June 2024).
3. Facility assessment review and approvals (June 2024 – October 2024).
4. Mitigation plan review and approvals (January 2025 - December 2025).
5. Mitigation implementation and compliance oversight (January 2026 and ongoing).

Scope and Cost Assumptions:

These fees are anticipated to cover one-time DEQ contracting expenses associated with review of individual assessment and mitigation plan reports. There will also be DEQ program expenses not covered by General Fund revenue that will continue at relatively consistent levels throughout the assumed 10-year program life.

Plan review costs are assumed to be 20% of the cost of developing the plan itself. Costs facilities will incur to develop plans are expected to range by an order of magnitude depending on land conditions, equipment conditions and operating choices. Assessment costs may range from a low of \$25,000 to over \$250,000. Mitigation Plan development costs are assumed to have a similar range of \$25,000 to more than \$250,000. Average costs are assumed to be \$150,000 per facility for each type of plan.

Mitigation implementation costs for facilities are assumed to be an order of magnitude greater than plan development costs, ranging from \$5,000,000 to \$50,000,000 per facility or more. See separate fiscal impact analysis.

Funding Rationale:

	Activity	General Fund (Coordinator, Engineer, Inspector)	Fee
October 2023 - May 2024	Rule Implementation Assistance	<ul style="list-style-type: none"> • Technical Assistance - facilities • Outreach- facilities and interested parties. • Community Grant Development 	<ul style="list-style-type: none"> • DEQ Internal Expenses (management, program development, contracting, communications, legal) • Contractor Technical Support • Technology Expenses (YDO)
June 2024 - December 2024 (assessments due 6/1/24; assume review and approval of 3 to 9 months)	Seismic Vulnerability Assessment Reviews (complete by June 2025)	<ul style="list-style-type: none"> • DEQ review and approval; • Ongoing technical assistance and outreach 	<ul style="list-style-type: none"> • DEQ Internal Expenses • Contractor Document Review • DOGAMI Review
Jan 2025 - June 2026 (plans due 180 days after assessment approval; assume plan review and	Risk Mitigation Implementation Plan Reviews (complete by June 2026)	<ul style="list-style-type: none"> • DEQ review and approval; • Public Involvement • Community Grant Development 	<ul style="list-style-type: none"> • DEQ Internal Expenses • Contractor Document Review • DOGAMI Review

approval of 6 to 12 months)		<ul style="list-style-type: none"> Ongoing technical assistance and outreach 	
2026 - 2036	Risk Mitigation Plan Implementation	<ul style="list-style-type: none"> Construction Inspection Plan Modification Review/Approval 	<ul style="list-style-type: none"> DEQ Internal Expenses Contractor Consultation Enforcement

DEQ Labor Cost Assumptions

Period	DEQ Staff	Level of Effort	Biennial Cost* (2 years)
July 2023 - June 2025	AST Coordinator	1 FTE (GF)	\$200,000
	Inspector	1 FTE (GF)	\$250,000
	Engineer	1 FTE (GF)	\$300,000
	Program Analyst*	1 FTE (Fee)	\$275,000
	Manager	0.5 FTE (Fee)	\$150,000
	Misc (Comms, Contract, Legal)	0.5 FTE (Fee)	\$150,000
		Total: 5 FTE	\$1,325,000
July 2025 - June 2027	Same	5 FTE	
July 2027 - June 2029	Same	5 FTE	
July 2029 - June 2031	Same	5 FTE	

* Labor shown in red is not included in SB1567 General Fund allocation

* biennial costs are approximations of salary and all overhead; further fiscal analysis needed

Contracting Cost Assumptions

Period	Contracting	Level of Effort	Amount
July 2023 - June 2025	Engineering Specialists	17 reviews @ \$30,000/doc	\$510,000
	DOGAMI Consultation	17 reviews @ \$6,000/doc	\$102,000
	Technology Development	Programing Fee (YDO)	\$50,000
July 2025 - June 2027	Engineering Specialists	17 reviews @ \$30,000/doc	\$510,000
	DOGAMI Consultation	17 reviews @\$6,000/doc	\$102,000
July 2027 - June 2029	Engineering Specialists	On call for consultation	\$100,000
July 2029 - June 2031	Engineering Specialists	On call for consultation	\$110,000
July 2031 - June 2033	Engineering Specialists	On call for consultation	\$120,000
		Five Biennia Total:	\$1,604,000

Fee Expenses

Period	DEQ Staff (5%/yr inflation)	Contracting (5%/yr inflation)	Total
July 2023 - June 2025	\$575,000	\$662,000	\$1,237,000
July 2025 - June 2027	\$630,000	\$612,000	\$1,242,000

July 2027 - June 2029	\$700,000	\$100,000	\$800,000
July 2029 - June 2031	\$770,000	\$110,000	\$880,000
July 2031 - June 2033	\$850,000	\$120,000	\$970,000
5 Biennia Total:	\$3,525,000	\$1,604,000	\$5,129,000

Expenses in red are related to base operations regardless of plan review (annual fee)
Expenses in purple are related to one time plan reviews (submittal fee)

Fee Options:

Fees for this program will apply to a defined group of 17 facilities. DEQ expenses are expected to vary similar to facility expenses. A fee structure could be established to average the costs across all 17 facilities, or to direct higher fees to the more expensive facilities. Directed fees could including use of a “time and materials” invoicing system. Using an invoicing system would increase program management costs and the fees charged. An invoicing system for one-time direct facility expenses could be combined with an annual compliance fee providing for base program expenses applicable to all facilities.

Fee/revenue structures considered are:

1. Fixed fees – equal for all facilities
2. Fixed Fees – based on plan complexity - High, Medium, Low (criteria needed)
3. Invoicing for DEQ and Contract Labor

Uniform Fixed Fee Example:

Fee Type	Amount	Activity Level	Revenue Generated
Facility Assessment Submittal:	\$39,000	17	\$663,000
Mitigation Plan Submittal:	\$36,000	17	\$612,000
Program Annual Compliance Fee*:	\$23,000/yr	17/yr for 10 years	\$3,910,000
Mitigation Plan Modification Fee:	\$5,000	17	\$85,000
		Total:	\$5,270,000

*based on the DEQ labor and engineering contract support averaged over 10 years

Fiscal Risk:

The assumptions used and fee structure selected may be inaccurate, resulting in the possibility of varied degrees of DEQ under or over funding. The annual compliance fee has been calculated to generate revenue adequate to fund DEQ expenses over the assumed 10-year life of the program. Annual compliance fee revenue would be higher than actual expenses in the first five years, generating surpluses needed in the final five years when expenses would exceed revenue. Doing so is intended to avoid the need for interim fee increases due to inflation.

If budget monitoring shows fee revenue to exceed needs, DEQ is investigating rule provisions to automatically lower the annual compliance fee to rebalance the budget. If budget monitoring shows fees revenue is not meeting expenses DEQ could institute a fee modification through further rulemaking (with related expenses) or seek additional General Fund revenue.

Enforcement Penalties

Penalty revenue associated with implementation of these rules is returned to the Oregon General Fund for appropriation by the Legislature as with other tax revenue. DEQ cannot use penalty revenue from this program to pay operating expenses.

Excerpt from SB1567 Fiscal Impact Statement (2/22/22):

The Department of Environmental Quality (DEQ) reports there are currently 17 facilities in Columbia, Multnomah and Lane counties that would be impacted by the measure. DEQ anticipates the need for three new permanent, full-time positions (each 0.50 FTE in 2021-23 and 1.00 FTE in 2023-25). This includes one Electrical Engineer 3 and one Natural Resources Specialist 4 to provide technical support for rulemaking, oversight of contracted professional engineers, implementation of the seismic risk mitigation program, and ongoing compliance work; and one Administrative Specialist 2 to support rulemaking, implementation, and compliance work. The agency would also anticipate hiring one limited-duration, full-time Operations and Policy Analyst 4 (0.50 FTE in 2021-23, 0.13 FTE in 2023-25) to lead rulemaking and interagency coordination during program startup. Additional cost estimates provided by the agency for program startup include \$200,000 to contract with subject matter experts for technical support on the rule development. Total estimated costs for the 2021-23 biennium are \$712,318. This funding is assumed to be General Fund, as the program would not expect any fee revenue to be received until June 2024.

During the 2023-25 biennium, the anticipated costs of the four positions (3.13 FTE) is estimated to be \$881,430 including associated services and supplies. In implementing the program, DEQ assumes the ongoing costs of the positions and related services and supplies would be paid for by General Fund rather than fees.

DEQ estimates additional costs of \$1.7 million to contract with third party subject matter experts for technical assessment and seismic risk plan reviews. DEQ anticipates establishing fees by administrative rule where each facility would pay a fee of approximately \$100,000 intended to cover these Professional Services costs in the 2023-25 biennium.