



State of Oregon Department of Environmental Quality

# Draft Fiscal Impact Statement

2022 Water Quality Fee Rulemaking

## Introduction

DEQ invites public input on proposed rule amendments to Chapter 340 of the Oregon Administrative Rules. The proposed rule amendments are to increase water quality fees in 2022 for fiscal year 2023 provided in ORS 468B.051. These fees apply to National Pollutant Discharge Elimination System permits and Water Pollution Control Facility permits.

The Water Quality Program's mission is to protect and improve Oregon's water quality. Protecting Oregon's rivers, lakes, streams, and groundwater quality keeps these waters safe so they can be used for drinking water, fish habitat, recreation, and irrigation. DEQ accomplishes this by developing and implementing water quality standards and clean water plans, issuing water quality permits, regulating sewage treatment systems and industrial dischargers, collecting, and evaluating water quality data, providing grants and technical assistance to reduce nonpoint pollution sources, and giving loans to communities to build treatment facilities.

DEQ needs the fee increase to help account for the anticipated increase in the cost of administering the permit program. This increase will also help DEQ achieve its objective for a sustainable water quality permitting program that issues timely, high quality permits, and to ensure compliance with permit conditions through inspections, enforcement, and reporting to the Environmental Protection Agency.

In October each year, DEQ publishes a permit issuance [work plan](#) to identify the individual National Pollutant Discharge Elimination System permits DEQ intends to issue in the coming year. DEQ identified 57 permits for development in the 2022 federal fiscal year (Oct. 1- Sept. 30). Permit issuance updates are provided quarterly [online](#).

# Fee Analysis

The Oregon Environmental Quality Commission approval of this rule proposal would increase existing fees. ORS 468B.051 authorizes EQC to act on the below proposed fees.

**ORS 468B.051 Fees for water quality permit.** Not more than once each calendar year, the Environmental Quality Commission may increase the fees established under ORS 468.065 for permits issued under ORS 468B.050. The amount of the annual increase may not exceed the anticipated increase in the cost of administering the permit program or three percent, whichever is lower, unless a larger increase is provided for in the DEQ's legislatively approved budget. [2005 c.523 §2; 2015 c.640 §1]

At the 419th Oregon Environmental Quality Commission meeting on April 6, 2022, the EQC authorized delegation to Director Whitman for the 2022 fee rulemaking.

## Brief description of proposed fees

DEQ is proposing a fee increase to support water quality fees for fiscal year 2023 by three percent above the fiscal year 2022 fees. These fees apply to (federal) National Pollutant Discharge Elimination System permits and (state) Water Pollution Control Facility permits. DEQ is also proposing to correct three Water Pollution Control Facility Onsite Permit fee table clarifications for design capacity flows.

The fee increase rulemaking consists of the following:

### Three percent increase for NPDES and WPCF fees

- OAR 340-071-0140:
  - WPCF Permit Fees; Table 9D
- OAR 340-045-0075:
  - Industrial NPDES and WPCF Individual Permits Application and Modification Fees; Table 70A
  - Industrial NPDES and WPCF Individual Permit Annual Fees; Table 70B
  - Domestic NPDES and WPCF Individual Permits, Application, Annual Modification Fees; Table 70C
  - Municipal Separate Storm Sewer System Permits, Application and Modification Fees; Table 70C
  - Domestic NPDES and WPCF Annual Population Fees, Table 70D
  - Annual Pretreatment Fees, Table 70E
  - All NPDES and WPCF Permits, Technical Activity, Plan Review and Other Fees, Table 70F
  - General NPDES and WPCF Permits, Application and Annual Fees, Table 70G, *excluding* 700PM fees under authority ORS 468B.118

- Municipal Separate Storm Sewer System Permits; Annual Fees Table 70H
- Underground Injection Control Permits Application Fees, Annual Fees, and Surcharges, Table 70I, **excluding** UIC fees authorized by rule, ORS 468B.195 and ORS 468B.196

### **Fee Table Clarifications**

- WPCF Permit Fees; Table 9D
  - Plan Review Fee design capacity clarification to include 600 gpd
  - Annual Compliance Determination Fee design capacity to include of 2,500 gpd and 20,000 gpd

### **Reasons**

The proposed fees will cover costs associated with implementing the permitting program and delivering services to regulated entities. Without this increase, DEQ would need to reduce permitting staff and delay executing on improvements to the program as identified in the document [Recommendations and Implementation Plan](#). The 2015 Oregon Legislature commissioned that report which an independent third-party consultant prepared.

DEQ proposes amending rules to increase water quality fees by three percent above 2022 fees. This includes fees for the National Pollutant Discharge Elimination System and the Water Pollution Control Facility permits, including Water Pollution Control Facility permits specific to on-site septic systems. The percent increase is allowable under ORS 468B.051.

### **Fee proposal alternatives considered**

#### **Not increasing fees**

Without the fee increase, DEQ will be unable to provide ongoing permit program functions at current service levels. This could result in losing permit writer positions or having to hold those positions vacant. DEQ would also be unable to carry out recommended program improvements identified in the 2015 program evaluation.

#### **Fee payer**

The proposed fees would affect individuals, businesses, and government agencies that hold or apply for the following permits:

- National Pollutant Discharge Elimination System permits
- Water Pollution Control Facility permits

#### **Affected party involvement in fee-setting process**

The proposed rules would affect individuals, businesses, and government agencies that hold or apply for National Pollutant Discharge Elimination System permits, Water Pollution

Control Facility permits. A Fiscal Advisory Committee will convene for this rulemaking with stakeholders representing the regulated community.

**Summary of impacts**

With existing data, DEQ cannot determine the extent to which the proposed fees would affect each consumer. DEQ anticipates some indirect impact on the public if the permit holder were to increase the cost of goods and services or fees charged to ratepayers to offset the three percent fee increase. For example, the annual fee for stormwater construction activity performed by public agencies under a 1200-CA permit in OAR 340-045-0075, Table 70G would increase by an estimated \$41, divided by the population served by the public agency.

**How long will the current fee sustain the program?**

The current fees are not sufficient to sustain the program. When developing its 2021-23 Agency Request Budget, DEQ estimated that even with a three percent annual fee increase in 2021 and another in 2022, budgeted expenditures to maintain existing staff levels would exceed revenues by an estimated two percent. Foregoing any fee increases would require

DEQ to hold positions vacant during the biennium. Current fees are not enough to carry out the modified current service level budget in 2021-23 biennium.

Table 1 below shows the increased cost of maintaining the current service level from the 2019-21 to the 2021-23 biennium, including the phased in cost of program enhancements the 2019 legislature approved in policy option packages 122 and 127. The information illustrates that fees and public funds (General Fund, Lottery Fund and Federal Funds) represent constant proportions of program costs from 2019-21 to 2021-23.

<b>Budget Comparison</b>				
<b>Table 1. Feb. 4, 2022</b>				
<b>(Permit fees last changed: Nov. 1, 2021)</b>				
	<b>2019-2021 Legislatively Adopted Budget</b>		<b>2021-2023 Legislatively Adopted Budget</b>	
Program costs covered by fees	\$15,583,714	58%	\$17,719,778	58%
Program costs covered by General Fund and Lottery Fund	\$9,564,535	36%	\$ 11,065,546	37%
Program costs covered by Federal Funding	\$1,716,369	6%	\$ 1,532,064	5%

# Statement of Fiscal and Economic Impact

## Fiscal and economic impact

Increasing NPDES and WPCF fees would benefit DEQ through increased financial support. The fee change will increase costs for entities that hold the affected permits or require fee-based services.

## State and federal agencies

The effect of the increase for NPDES and WPCF fees on state agencies depends on the permit type. Oregon state agencies hold approximately 116 active water quality permits.

Examples of the increase on selected permit types include:

- Industrial NPDES fee permits for Tier 2 sources, dairies and fish hatcheries, and facilities that dispose of wastewater only by evaporation from watertight ponds or basins, will increase between \$101 and \$115. This affects approximately five state agencies (OAR 340-045-0075, Table 70B).
- Annual fees for WPCF individual permits will increase between \$18 and \$583. This affects approximately five state agencies (OAR 340-045-0075, Table 70C).
- Annual fees for general NPDES and WPCF permits will increase between \$13 and \$23. This affects approximately 10 state agencies (OAR 340-045-0075, Table 70G). Annual
- compliance determination fees for WPCF permits will increase between \$1 and \$42. This affects approximately eight state agencies (OAR 340-071-0140, Table 9D).

## Local governments and public

The effect of the three percent increase for NPDES and WPCF fees on local governments depends on the permit type. Oregon local governments hold approximately 620 total active water quality permits.

Examples of local government entities include water districts, irrigation districts, cities, towns, ports, sanitary districts, library districts, counties, and school districts. For this fiscal analysis, DEQ considered ports and school districts as separate local governments even if contained within a city or county government.

Examples of the three percent fee increase on selected permit types include:

- Industrial NPDES fee permits for Tier 1 and 2 sources, dairies and fish hatcheries, and facilities that dispose of wastewater only by evaporation from watertight ponds or basins, will increase between \$101 and \$115. This affects approximately eight local governments and their permit co-permittees (OAR 340-045-0075, Table 70B).
- Domestic NPDES and WPCF individual permit annual fee increases will range from \$83 to \$3,518. The \$3,518 increase will affect one local government (OAR 340-045-0075, Table 70C).
- Annual fees for general NPDES and WPCF permits will increase between \$13 and \$23. This will affect an approximate total of 293 local government permits (OAR 340-045-0075, Table 70G).

- Annual permit processing fees for onsite systems and compliance determination fees for WPCF permits will increase between \$1 for holding tanks to \$42 for an on-site sewage lagoon with no discharge. This will affect approximately 67 local government permits (OAR 340-071-0140, Table 9D).

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

The three percent fee increase would affect approximately 150 wastewater permit holders that are large businesses. For example, large businesses that require an industrial NPDES Tier 1 permit would pay an additional \$891 in annual fees for pulp, paper, or other fiber pulping industry permits.

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

According to 2018 data from the Oregon Employment Department, the fee increase may affect approximately 3,300 small businesses that hold water quality permits. However, no information is available to determine how the fee increases would affect each permit holder. For example, if a small business is categorized as a Tier 2 facility for food or beverage processing, including produce, meat, poultry, seafood, or dairy for human, pet, or livestock consumption, then under OAR 340-045-0075, fee Table 70B, their annual permit fee would increase by an estimated \$185 over the previous year's annual fee.

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

DEQ estimates the fee increases for wastewater permits would affect approximately 3,300 small businesses. Examples of small businesses that have wastewater permits are food processors, mining operations, dairies, fish hatcheries, smelting and refining operations, timber processors, wood products manufacturers, retail operations, seafood processors, gravel mining, wineries, construction companies, petroleum hydrocarbon cleanup operations, and vehicle and equipment wash water operations.

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

No additional activities are required to comply with the proposed rules.

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

No additional resources are required to comply with the proposed rules.

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

DEQ plans to meet with a fiscal advisory committee in spring 2022. The committee will be composed of a diverse group of stakeholders representing a wide cross section of DEQ's permit holders. During and after the meeting, DEQ will request stakeholders' input concerning potential impacts to small businesses and how DEQ can reduce that impact.

During the public comment period, DEQ will request input on whether to consider other options for achieving the rules’ substantive goals, while reducing the rules’ negative economic impact on small businesses.

## Documents relied on for fiscal and economic impact

Document title	Document location
Fee increase calculations	DEQ Headquarters
Recommendations and Implementation Plan	DEQ web page: <a href="https://www.oregon.gov/deq/FilterDocs/wqp-FinalReport.pdf">https://www.oregon.gov/deq/FilterDocs/wqp-FinalReport.pdf</a>
DEQ 2021- 2023 Legislatively Approved Budget	DEQ Headquarters
DEQ 2021-2023 Agency Request Budget	DEQ Headquarters
DEQ’s water quality permit database	DEQ Headquarters
Businesses by size or firm of 50 or fewer employees	Oregon Employment Department website reports 875 Union Street NE Salem, OR 97311 <a href="https://www.qualityinfo.org/bi">https://www.qualityinfo.org/bi</a>

## Advisory committee fiscal review

DEQ appointed an advisory committee.

As ORS 183.333 requires, DEQ will ask for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact
- The extent of the impact
- Whether the proposed rules would have a significant adverse impact on small businesses
- Whether, if there is a significant adverse impact on small businesses, DEQ has reduced the impact on small businesses as ORS 183.540 requires

The committee will review the draft fiscal and economic impact statement.

## 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 does not anticipate this fee correction will affect building costs that could be passed on to the home buyer.

DEQ determined the proposed rules would do the following:

- Affect 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.
- Require a builder of a 6,000-square-foot parcel to pay an additional \$40 for a construction stormwater permit if the parcel is part of a common plan of development disturbing one or more acres. Assuming the three percent increase, this would raise the fee from \$1348 to \$1388.
- The proposed rule may not affect a builder of a 6,000-square-foot parcel that is not part of a common plan of development disturbing one or more acres because there is no requirement for these parcels to have a construction stormwater permit from DEQ. DEQ understands that some entities may charge a Systems Development Charge for implementing local stormwater or wastewater programs. Increased permit fees may affect housing costs through increased Systems Development Charges.

## Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

Adoption of the proposed rule would affect wastewater permitting fees statewide - across various sectors, public and private. Since the fee increase will apply equally across all permit categories and tiers, and there are no expected changes to practical implementation of the permitting program activities as a result of this rule adoption, there is no expected impact on racial equity in the state. Increasing the fees, as proposed, will help maintain program services critical to protecting public health and the environment (such as permit compliance assurance, inspections and enforcement) which may be particularly important in BIPOC or historically underserved communities.

### Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).