



Oregon Department of Environmental Quality
Nov. 14-15, 2019
Oregon Environmental Quality Commission Meeting
Agency Staff Report
Item L: Rulemaking (Action)

2019 Heating Oil Tank Program Fees Increase

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DEQ Recommendation to the EQC

DEQ recommends the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

Proposed EQC motion

I move that the commission adopt the proposed rule amendments, as seen in Attachment A of this staff report, as part of Chapter 340 of the Oregon Administrative Rules, Divisions 163 and 177.

Introduction

DEQ's Heating Oil Tank (HOT) Program handles issues related to:

- Tanks storing fuel oil (typically Number 1 and 2 diesel oil) to heat buildings for human habitation
- Requirements for voluntarily decommissioning HOTs
- Reporting releases from HOTs, and soil and groundwater contamination cleanup
- Rules for contractors working on HOTs and soil contamination cleanup

The HOT program authorizes and facilitates a third party certification process to provide decommissioning and cleanup oversight. To perform HOT decommissioning work, contractors must hold a DEQ service provider license, including errors and omissions insurance, and certify that their work complies with Oregon rules. DEQ's role is to ensure that work is performed adequately by updating and disseminating standards, licensing service providers, maintaining project records and auditing project work. This program is funded by fees; DEQ does not receive general funds to conduct this work.

The service provider licensure and report filing fees, defined in OAR chapter 340, divisions 163 and 177, fund the HOT program. The current fees were set more than ten years ago with licensure fees established in 1999, and report-filing fees increased in 2007. The HOT program is designed to operate with at least four full-time staff positions (4.30 FTE) providing technical assistance, outreach, site inspections, service provider audits and final report review. Existing fee revenue only funds 3.20 FTE at current levels of activity.

The proposed permanent rule amendments increase HOT program licensure fees for individuals and small businesses conducting HOT decommissioning work in Oregon. The proposed amendments also increase report-filing fees for the work. This includes certified reports for HOT decommissions with no confirmed release, known as clean decommissions, and tiered fee increases based on the level of complexity for HOT decommissions requiring cleanup/corrective action. The 2019 Oregon Legislature approved these fee increases. The Oregon Environmental Quality Commission's approval of this rule proposal would implement the fee increases authorized by the legislature. The new fees would become effective Jan. 1, 2020. This rule change would align DEQ's administrative rules with the new statutory fee amounts.

Statement of Need

What need would the proposed rule address?

The proposed rule amendments would increase program revenue in order to restore staffing to the level the DEQ HOT program is designed for. The current fees are inadequate to maintain the program at authorized levels.

How would the proposed rule address the need?

The proposed rule amendments increase the HOT service provider licensure and report filing fees. DEQ expects the subsequent increase in revenue to fund the four program positions for six years after forecasting inflation. Absent new developments, DEQ intends to reevaluate and propose fee updates in 2025.

How will DEQ know the rule addressed the need?

DEQ expects the modified fees to help cover 100 percent of the HOT program costs. Increased program revenue should also provide DEQ with the resources to address potential opportunities including, but not limited to:

- Auditing properties following cleanup action, including supplemental data collection
- Random field visits to active HOT investigations
- Periodically reviewing cost estimates for decommissioning work
- Reviewing corrective action plans before implementation
- Reviewing redevelopment activities at risk-based HOT closures
- Recertification/DEQ approval at sites where cleanup status changes
- Consistent contractor bulletins and meetings
- Re-engaging current property owners who have open files with DEQ
- Electronic document management (internal and public records requests)
- Electronic submittal of all certification reports, which provides for:
 - Improved efficiency for processing
 - Real-time access for project managers, service providers, and property owners
 - Decreased demand for public records requests
- Periodic database improvements/modifications
- Collaboration with DEQ headquarters staff to work on necessary rule changes
- Website improvements and updates

Rules Affected, Authorities, Supporting Documents

Lead division

Land Quality Division

Program or activity

Heating Oil Tank Program

Chapter 340 action

Amend: 340-177-0095, 340-163-0150

Statutory Authority - ORS	
466.706 – 466.995	465.200 – 465.320

Statutes Implemented - ORS				
466.706	466.750	466.868	466.872	

Legislation

Senate Bill 40, year 2019.

Documents relied on for rulemaking

Document Title	Document Location
Oregon Department of Environmental Quality HOT Project Cost Summary and Data, Year 2018	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400
Oregon Department of Environmental Quality HOT Cleanups and Property Owner Type, Year 2018	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400
Oregon Department of Environmental Quality HOT Project Type 2007-2017	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400
Oregon Department of Environmental Quality HOT Reported Sites Projections, January 2019	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400

Fee Analysis

EQC's approval of this rule proposal would implement increases to existing fees the Oregon legislature approved in 2019. The fees maintain the HOT program. EQC's authority to act on the proposed fees derives from Oregon Revised Statutes (ORS) 465.200 – 465.320 and 466.706 – 466.995.

Brief description of proposed fees

The proposed rule amendments increase the licensure and report-filing fees stated in OAR 340-163-0150 and 340-177-0095 respectively. The current fees were set more than 10 years ago with licensure fees established in 1999 and report-filing fees increased in 2007.

Licensure fees

OAR 340-163-0150 sets HOT licensing fees. HOT service providers pay a non-refundable license fee of \$750 for a 12-month license. HOT supervisors pay a non-refundable license fee of \$150 for a 24-month license. While the HOT supervisor license fee increases to \$200 for a 24-month license, DEQ will phase in increases to the HOT service provider license fees as follows:

- Year 2020: \$800 (total) for the year
- Year 2021: \$900 (total) for the year
- Year 2022: \$1000 (total) annually

The license fee changes would begin to take effect Jan. 1, 2020. This rule change will align DEQ's administrative rules with the new fee amounts authorized by statute.

Report filing fees

The tank owner, or service provider on the owner's behalf, must submit certified project reports and receive DEQ's approval for HOT services performed at underground sites. The required filing fee must accompany certified reports submitted to DEQ. OAR 340-177-0095 currently defines the report-filing fees as \$50 for decommissioning a tank with no confirmed release and \$125 for a cleanup report and corrective action. DEQ initially established the fees in rule in 1999. The legislature increased these fees in 2007, via ORS 466.872, to \$75 and \$200 respectively, superseding the existing rules.

The 2019 statute change authorizes an increase in the required filing fee for a clean decommission (no release and subsequent cleanup) from \$75 to \$100 for each project. The legislation also directs the EQC to create three fee categories for HOT cleanup projects in rule. An existing DEQ rule already defines three project types based on the level of agency effort expected for each: Soil Matrix, Generic Remedy, and Risk Based.

This rule action proposes using those three project types for the three fee categories and tier report filing fees as follows:

- Soil Matrix Cleanup or "Simple" project type will require a \$250 cleanup report filing fee
- Heating Oil Tank Generic Remedy Cleanup or "Intermediate" project type will require a \$350 cleanup report filing fee

- Risk-Based Cleanup with a Corrective Action Plan or “Complex” project type will require a \$450 cleanup report filing fee

Reasons

The proposed permanent rule amendments would address:

- **New fee created by statute**
The proposed rule change would address new fees created by statute (ORS 466.868 and ORS 466.872) which authorize increases in the HOT service provider licensure and report-filing fees.
- **Change in fee revenue**
The DEQ HOT program is designed to operate with at least four full-time staff positions (4.30 FTE). Staff provide technical assistance, outreach, site inspections, service provider audits and final report reviews. Existing fee revenue only funds 3.20 FTE at current levels of activity.
- **Increased program costs**
The HOT service provider and supervisor licensure fees have continued at the original rates since program inception in 1999. Report-filing fees have remained unchanged since 2007. There has been no adjustment for inflation. Increased program costs include, but are not limited to, salaries and benefits for the adequate number of staff (4.30 FTE) needed to provide program support.

With the proposed fees providing enough resources, DEQ can maintain HOT closure timeliness, continue outreach and auditing, and improve public records management and access. Program activity levels also depend on real estate market activity. If real estate activity decreases, then DEQ revenue decreases and the agency scales back labor accordingly. If real estate activity levels surge, then increased project fee receipts allow DEQ to increase activity levels.

Fee proposal alternatives considered

Options DEQ considered included: 1) raising fees to fully fund existing positions and 2) operating at decreasing levels of effort with existing fees. Fee revenue for full funding must support the personnel services and supply costs for at least four full-time staff, including a Natural Resources Specialist 1, Natural Resources Specialist 3, and two Office Specialist 2's. If the fee increase is not adopted into rule, then DEQ may need to hold one of these positions vacant during the 2019-21 biennium due to the lack of available funding. Proceeding at status quo would continue to limit program effectiveness due to diminished staff levels. Oregonians would therefore experience:

- Decreased oversight of HOT service providers
- No effective HOT service provider inspections or audits
- Extended time to review reports
- Increased public health risk from potential contamination

If the tiered report-filing fee categories are not established in rule, the new cleanup project fees may not be applicable.

Fee payer

Fee payers include:

- Homeowners, developers, small businesses, and other public entities who hire HOT service providers for underground work, pay the filing fee required for certified decommissioning or cleanup reports. It is common practice for the HOT service provider to submit the report-filing fee along with the decommissioning or cleanup certification, or both, to DEQ on the fee payer's behalf and to include that expense in their invoices of the total project cost. In 2018, DEQ collected report-filing fees for 1,930 projects.
- Each business engaged in performing HOT services (HOT service providers) must pay the annual non-refundable license fee. In 2018, 48 businesses maintained HOT service provider licenses.
- Each individual employed by the business and charged with the supervisory responsibility to direct and oversee the performance of tank services at a facility (HOT service provider supervisor) must pay the non-refundable license fee every two years. In 2018, 112 individuals maintained HOT supervisor licenses.

Affected party involvement in fee-setting process

DEQ contacted homeowners who had a heating oil tank cleaned up or decommissioned within the last 12 months. The homeowners received a survey to evaluate their experiences with service providers and DEQ's program. In September 2018, DEQ began to include survey flyers with closure letters and called more than 100 homeowners by the following January. The homeowner survey found the following:

- Most respondents (81 percent) do not have any contact with DEQ during the cleanup or decommission process, or both. When they do, they are satisfied with the program's response.
- All respondents were very satisfied with the quality of work performed by their service provider.
- The most common issues they encountered in the process included cost, not understanding the timeline of work and DEQ approval, and not understanding how to cleanup or decommission a heating oil tank.
- About one-quarter of respondents thought DEQ field oversight during the cleanup or decommission process, or both, would have been helpful.

In October 2018, DEQ conducted a focus group with HOT service providers to share the results of the homeowner survey and to garner feedback on the proposed fee increase and functionality of the HOT program. The main takeaway from this discussion was a recommendation for a tiered-fee increase for each type of cleanup report – Soil Matrix, Generic Remedy and Risk Based. DEQ has since incorporated the tiered approach into the

fee increase proposal. DEQ staff agreed with this approach as it reflects the increased level of complexity and staff time needed to review these types of cleanups.

Service providers expressed the desire to receive more technical assistance from DEQ. This would include regular service provider bulletins and increased availability from project managers to discuss site issues. For complex sites that require significant coordination with program project managers, DEQ also anticipates increased use of “cost recovery” to pay directly for time.

The focus group also discussed DEQ inspecting and auditing a small percentage of each service provider’s onsite work. Service providers asked why this was necessary since there is a certification system. DEQ staff consider field inspections essential to provide environmental protection for consumers by verifying that HOT decommissions and cleanups are conducted as agency rules require.

In November 2018, DEQ presented an outreach webinar to the Oregon Association of Realtors. The 45-minute presentation delivered basic information about the HOT program, discussed the outreach performed with homeowners and service providers and described the proposed fee increase. Following the webinar, the realtors received a survey. Comments included the need to increase awareness and information for realtors and homeowners about HOT decommissioning and cleanup.

In July 2019, DEQ designated the fiscal advisory committee for the Heating Oil Tank Program Fee Increases 2019 Rulemaking, to provide stakeholders the opportunity to inform decisions on the proposed fee structure and consider fiscal and economic impacts. The committee members represent entities these rules directly and indirectly affect and include HOT service providers (individuals and small businesses), homeowners, and realtors.

Summary of impacts

The proposed permanent rule amendments modify HOT program licensure fees, decommissioning certification fees, and corrective action certification fees. The changes apply to HOT program fees assessed on and after Jan. 1, 2020. DEQ expects the proposed amendments would increase the direct cost to the fee payers previously described.

Fee payer agreement with fee proposal

Feedback garnered through the 2018-2019 homeowner survey, October 2018 HOT service provider focus group and November 2018 webinar to the Oregon Association of Realtors featured the following agreements:

- The need to increase awareness and information for realtors and homeowners about HOT decommissioning and cleanup
- The recommendation for a tiered-fee increase for each type of cleanup report – Soil Matrix, Generic Remedy and Risk Based
- More technical assistance from DEQ, which would include regular service provider bulletins and increased availability from project managers to discuss site issues

DEQ considers that the proposed fee structure is responsive to this feedback and the objective to maintain the HOT program’s effectiveness.

The fiscal advisory committee met on August 2, 2019, to review and provide further input into the proposed fee increases. DEQ recorded minutes that document the committee’s comments and recommendations. The agency will include this information with the proposed rule amendments through the required formal notice process that includes a public hearing and the opportunity for the public to comment. DEQ will consider all comments and take the final proposed rule amendments to the EQC in November 2019.

Links to supporting documents for proposed fees

Oregon State Legislature 2019 Regular Session – SB 40

<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB40>

Fiscal Impact of Proposed Legislation:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/44412>

Revenue Impact of Proposed Legislation:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/44526>

Open Government Impact Statement:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/44918>

Staff Measure Summary – Joint Committee on Ways and Means:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/51322>

Subcommittee Recommendation:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/CommitteeMeetingDocument/201740>

How long will the current fee sustain the program?

The current fees are inadequate to sustain the program at authorized levels. The new fees were set to fund four program positions for six years after forecasting inflation. Absent new developments, DEQ intends to reevaluate and propose fee updates in 2025.

The HOT service provider and supervisor licensure fees have continued at the original rates since the program’s inception in 1999, while report-filing fees have remained unchanged since 2007 without adjustments for inflation.

Current Fees		
Program costs covered by fees	\$338,715/yr.	74%
Program costs covered by General Fund	\$0	0%

Fee Last Changed	2007 – Report-filing fees increased 1999 – Licensure and report-filing fees established in rule
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Proposed Fees		
Expected change in revenue (+/-)	+ \$383,959 (2019-21)*	100%
	+ \$513,872 (2021-23)	100%
Main GF required by statute/rule to fund program	\$0	0%
Proposed fee allows General Fund replacement	\$0	0%
Expected effective date	Jan. 1, 2020 for report- filing fees Jan. 2, 2022 for licensure fees (phased fee increases shall begin Jan. 1, 2020)	
* For purposes of this analysis, agency revenue specifically from the modified license fees is assumed to not increase until Jan. 1, 2022. The expected revenue increase is staggered by two years from the effective date of these fee increases to account for the two-year operative duration of the supervisor licenses and the phased fee schedule for the service provider licenses. DEQ may assess the increased fee amount before Jan. 1, 2022 for license activities occurring on or after Jan. 1, 2022. Total revenue is expected to eventually decline after fee implementation due to projected declining volumes.		

HOT Program Fee Schedule					
Fee Description	Current Fee Amount	Proposed Fee Amount	Assumed Effective Date	2019-21 Additional Revenue	2021-23 Additional Revenue
Service provider business license	\$750	\$1,000	1/1/22	-	\$18,000
Service provider individual license	\$75	\$100	1/1/22	-	\$4,200
Certification, report-filing fee	\$75	\$100	1/1/20	\$23,379	\$29,938
Certification, corrective action report-filing fee – Simple	\$200	\$250	1/1/20	\$29,470	\$37,737
Certification corrective action report-filing fee – Intermediate	\$200	\$350	1/1/20	\$75,050	\$96,104

HOT Program Fee Schedule					
Fee Description	Current Fee Amount	Proposed Fee Amount	Assumed Effective Date	2019-21 Additional Revenue	2021-23 Additional Revenue
Certification corrective action report-filing fee – Complex	\$200	\$450	1/1/20	\$256,060	\$327,893
Total				\$383,959	\$513,872

Statement of Fiscal and Economic Impact

Fiscal and economic impact

The proposed permanent rule amendments will increase HOT program licensure fees for small businesses and individuals conducting HOT decommissioning work in Oregon. The proposed amendments will also increase report-filing fees for the work. This includes certified reports for HOT decommissions with no confirmed release (“clean decommission”) and tiered-fee increases based on complexity for HOT decommissions that require cleanup, or corrective action, or both. The accepted fee increases will apply to HOT program fees assessed on and after Jan. 1, 2020.

Statement of cost of compliance

All entities that conduct a HOT decommissioning project must pay the appropriate report filing fee. These parties will experience a slight increase in direct costs with modified report filing fees. They may also experience indirect impacts from the cost of increased HOT service provider license fees. Contractors may decide to pass this cost on to customers through increasing the overall price of HOT decommission work. DEQ cannot quantify these potential transferred costs. However, they are expected to comprise a small fraction of the average project cost of \$1,824 for clean decommissioning or \$5,271 for cleanup. Parties subject to these costs include local governments and schools, large and small businesses and the public.

DEQ

DEQ anticipates adopting the proposed rule amendments will have a minimal impact on agency expenditures. Costs may temporarily increase with agency staff training and outreach following the rule amendments. Since the agency already disseminates HOT program information through the HOT Service Provider Bulletin, it expects any subsequent cost increases to be nominal.

Small businesses – businesses with 50 or fewer employees

Small businesses that need to contract HOT decommissioning work would have the direct and indirect costs previously described under Statement of Cost of Compliance.

Small businesses that perform HOT work (service providers) will experience increases in direct costs associated with the modified licensure fees. To minimize immediate impact to small businesses, DEQ will gradually phase in the 12-month HOT service provider license fee increase between January 1, 2020 and the end of year 2021. The total increase of 33% from the current fee will be effective as of January 1, 2022. DEQ will increase the 24-month HOT supervisor license fee from \$150 to \$200. This also reflects a 33% increase from the current fee and will become effective Jan. 1, 2020.

- **Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule**

Based on the number and type of HOT projects recorded for year 2018, an estimated total of 225 small businesses will be subject to the increased report-filing fees. Real

estate development companies comprise approximately 50 percent of these businesses. The remaining businesses vary in industry and include, but are not limited to, commercially owned apartment complexes, non-profit companies and religious centers. The 2018 data found approximately 70 small businesses paid the report-filing fee for a clean decommission, while 155 small businesses paid the fee for filing a cleanup and corrective action report.

Additionally, 48 small businesses currently perform HOT work as licensed service providers and employ 112 individuals with HOT supervisor licenses. These businesses will be subject to the fee increase for both types of licenses.

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

The proposed rule amendments will not require any additional activities for small businesses to comply. HOT service providers and supervisors already pay the licensure fees. Entities contracting for HOT work already pay the report-filing fees as applicable (clean decommission or corrective action) through the overall cost of the project.

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

The proposed rule amendments will not require any additional resources. HOT service providers and supervisors already pay the licensure fees. Entities contracting for HOT work already pay the report-filing fees as applicable (clean decommission or corrective action) through the overall cost of the project.

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

In October 2018, DEQ facilitated a HOT Service Provider Focus Group meeting that discussed sustaining the HOT Program and the proposed rule amendments. The HOT Service Provider Focus Group included small business representatives who conduct HOT work in Oregon. DEQ invited participants from the 2018 meeting, along with realtors and former HOT owners, to serve on the fiscal advisory committee for this rulemaking. The committee has reviewed and further advised on the fiscal and economic impact of adopting the rule amendments.

Documents relied on for fiscal and economic impact

Document title	Document location
Oregon Department of Environmental Quality HOT Project Cost Summary and Data, Year 2018	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400

Oregon Department of Environmental Quality HOT Cleanups and Property Owner Type, Year 2018	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400
Oregon Department of Environmental Quality HOT Project Type 2007-2017	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400
Oregon Department of Environmental Quality HOT Reported Sites Projections, January 2019	Oregon DEQ – Land Quality Division Heating Oil Tank Program 700 NE Multnomah St., Ste. 600 Portland, OR 97232-1400

Advisory committee fiscal review

DEQ appointed an advisory committee. As ORS 183.33 requires, the agency asked for the committee’s recommendations on:

- Whether the proposed rules will have a fiscal impact
- The extent of the impact
- Whether the proposed rules will have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 to reduce that impact

The committee reviewed the draft fiscal and economic impact statement and its findings are documented in the approved minutes for the meeting on Aug. 2, 2019. The documented findings are included in the record of this rulemaking.

The committee determined that the proposed rule amendments would have a fiscal impact. However the extent of that impact depends on the number of projects a business contracts annually. Therefore, the smaller the business, the greater the impact. The committee also expressed that the fees are just one portion of other business costs that are gradually increasing with time, so the fee increase alone does not present a significant adverse impact to small businesses. DEQ documented input from the committee on how the agency can help reduce the impact by simplifying the report submission process. The committee expressed that an electronic reporting process with DEQ would help businesses reduce the administrative time and costs for report filing.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rule amendments would 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. The agency determined the proposed rule amendments could affect the development costs by slightly increasing the cost to decommission a HOT and address cleanup/corrective action if warranted. The increased cost applies to projects that require this work, but it is considered insignificant compared to the overall cost of purchasing and/or developing a property.

Federal Relationship

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so. Since there are no corresponding federal regulations for heating oil tanks, the proposed rules are not different from or in addition to federal requirements.

Land Use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objectives or areas identified in the statewide planning goals
 - Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ determined that these proposed rule amendments do not affect land use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.

EQC Prior Involvement

DEQ did not present additional information to the EQC specific to this proposed rule revision.

Advisory Committee

Background

DEQ convened the Heating Oil Tank Program Fee Increases, 2019 Rulemaking Advisory Committee. The committee included heating oil tank service providers, realtors and former tank owners, and met once on Aug. 2, 2019. The committee's web page is located at: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhot2019.aspx>.

The committee members were:

HOT Program Fee Increases, 2019 Rulemaking Advisory Committee	
Name	Representing
Darren Blaine	Soil Solutions (HOT Service Providers)
John Harding	Xavier Environmental (HOT Service Providers)
Bill Knutson	K&S Environmental (HOT Service Providers)
Val Thorpe	Hasson Company (Realtors)
Jenny Pakula	Oregon Association of Realtors
Liz Morales	Homeowner/Former HOT owners
Margaret Lamb	Homeowner/Former HOT owners
Phil Backman	Homeowner/Former HOT owners

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - Rulemaking
 - Heating Oil Tanks
 - Environmental Cleanup Program
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#)
- Provided notice of meetings and links to committee information through postings on Facebook and Twitter

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee provided input on the proposed rule amendments and future HOT program improvements. The meeting agenda, summary and handouts are available on the committee's webpage at:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhot2019.aspx>.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing for Sept. 18, 2019, by:

- On Aug. 15, 2019, filing notice with the Oregon Secretary of State for publication in the September 2019 Oregon Bulletin
- Notifying the EPA by mail
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at:
<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhot2019.aspx>
- Emailing interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Heating oil tanks
 - Environmental cleanup
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senator Michael Dembrow, Chair, Senate Committee on Environment and National Resources
 - Senator Alan Olsen, Vice-Chair, Senate Committee on Environment and National Resources
 - Representative Ken Helm, Chair, House Committee on Energy and Environment
 - Representative E. Werner Reschke, Vice-Chair, House Committee on Energy and Environment
 - Representative Sheri Schouten, Vice-Chair, House Committee on Energy and Environment
- Emailing Advisory Committee Members
- Postings on Twitter and Facebook
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Public Hearing

DEQ held one public hearing on Sept. 18, 2019. DEQ received zero comments at the hearing. Later sections of this document include a summary of the two comments received during the open public comment period, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

Presiding Officer's Record

Hearing

Date	Sept. 18, 2019
Place	Oregon DEQ 700 NE Multnomah St., Suite 600 Portland, OR 97232-1400
Start Time	6 p.m.
Ending Time	6:37 p.m.
Presiding Officer	Jessika Cohen

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. Nobody from the public attended the hearing in person and no one attended by teleconference. No person presented any oral testimony or written comments during the hearing. After waiting at least thirty minutes to pass, the presiding officer ended the hearing.

Summary of Public Comments and DEQ Responses

Public comment period

DEQ accepted public comment on the proposed rulemaking from Aug. 15, 2019 until 4 p.m., Friday, Sept. 20, 2019.

DEQ received two public comments by the close of the public comment period. The comments and associated commenters are listed below with DEQ's responses. Original comments are on file with DEQ. DEQ did not change the proposed rule amendments in response to comments.

Commenter 1: Del Riesenhuber

Affiliation: Not Provided

Comment

I am opposed to this rule change. It does not appear to have any purpose relative to environmental protection and only increase unnecessary fees.

DEQ Response

Heating oil contains harmful chemicals that may cause cancer and other illnesses. Most heating oil tanks were installed underground at pre-1960 residential and commercial properties. These tanks are usually made of steel that corrodes and weakens over time.

Leaking underground tanks can release harmful vapors into buildings and pollute groundwater. Leaks are often discovered during heating oil tank decommissioning work, thus it is important that this work and any cleanup actions are adequately performed.

The DEQ Heating Oil Tank Program serves as a third-party certification system to help ensure that decommissioning work is properly conducted. This program is maintained by the service provider licensure and report filing fees, which have not been adjusted in over ten years. Additional funds will help sustain the program and provide DEQ the resources to provide technical assistance to homeowners and service providers, and conduct direct inspections of work to ensure compliance with environmental regulations and protect homeowners from the risk of fraud. Without the fee increase oversight activities would be dramatically reduced.

Commenter 2: Zaph Mann

Affiliation: Not Provided

Comment

I note with interest the proposal to increase fees related to companies/contractors decommissioning Heating Oil Tanks. I did not see any attention (here) given to programs to help homeowners with the costs of replacing Heating Oil Tanks and the systems with more modern solutions.

Are there, or will there be, any substantive incentive programs? If not I fear the DIY and un-inspected practices of rural homeowners unable to afford expensive contractors, will continue.

DEQ Response

In the 1990s, Oregon had a heating oil cleanup and decommissioning grant program, which was funded by a tax on heating oil. This program became insolvent due to increasing tank leak discoveries and declining oil use. Consequently, the Oregon Legislature terminated the program in 1999.

Since tank discovery is most commonly triggered by real estate transactions, rural underground tank identification is disproportionately delayed. DEQ anticipates ongoing policy review of high-risk heating oil tank situations and intends to carry this concern into that work.

Implementation

Notification

The proposed rule amendments, if approved by the commission, would be filed with the Secretary of State and effective Jan. 1, 2020. This rule action updates existing rules to match legislatively adopted fees. Technical requirements for heating oil tank decommissioning, cleanup, and licenses are not changing.

DEQ will notify affected parties by:

- Posting the announcement on the [Heating Oil Tank Fees 2019 Rulemaking webpage](#)
- Emailing interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Heating oil tanks
 - Environmental cleanup
- Emailing Advisory Committee members
- Adding the announcement to the [DEQ public calendar](#)
- Providing notice and links to information through postings on Twitter and Facebook

Compliance and enforcement

Affected parties

DEQ will directly communicate the rule change to HOT service providers and supervisors currently subscribed or listed with the agency. As of Jan. 1, 2020, service providers and supervisors attaining a license will pay the new licensure fee amounts this rule change sets. Filing fees for reports submitted to DEQ starting on Jan. 1, 2020 will also be subject to the new fee categories set by this rule change.

DEQ staff

Limited procedural changes involve evaluating the complexity of cleanup work to identify the appropriate report filing fee category. Work performed in accordance with Soil Matrix, Generic Remedy, or Risk-Based cleanup will be subject to the new fees defined under Simple, Intermediate, or Complex categories, respectively.

Measuring, sampling, monitoring and reporting

Affected parties

The rule amendments do not present technical changes. Measuring, sampling, monitoring, and reporting requirements will not change.

DEQ staff

This is a fiscal change. Existing budget processes will monitor revenue and sufficiency of the fee change.

Systems

Website

By Nov. 22, 2019, one week following the EQC meeting, DEQ will update its external DEQ Heating Oil Tank webpage to feature the impending fee changes alongside current fees. DEQ will post project registration instructions and license applications for use on Jan. 1, 2020, and later Dec. 1, 2019. DEQ will remove old instructions and application forms by Dec. 31, 2019. On Jan. 2, 2020, DEQ will remove the previous fee information from the webpage, leaving the new fee amounts.

Database

No database changes are necessary. Actual amounts paid are recorded regardless of fee amount.

Invoicing

No invoicing occurs. Fee payers submit payment with project reports or license application forms.

Training

Affected parties

DEQ will disseminate a Service Provider bulletin confirming the new fees by Dec. 1, 2019. The agency previously sent a related bulletin on Jan. 28, 2019, which was soon followed by legislative proceedings that included notices and hearings concerning the proposed rule change.

DEQ staff

Additional staff training is not required.

Five-Year Review

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year review because the proposed rules would amend or repeal an existing rule. ORS 183.405(4).

Accessibility Information

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.

Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Strikethrough~~: Deleted Text

Underline: New/inserted text

~~Text deleted from one location~~ - and moved to another location

Division 177

RESIDENTIAL HEATING OIL UNDERGROUND STORAGE TANKS

340-177-0095

Certified Reports

[NOTE: Summary of Changes: Updates filing fees to match 2019 statutes and splits cleanup project fees into three categories.]

(1) The tank owner, or service provider on the owner's behalf, must submit certified project reports and receive the department's approval ~~from the Department~~ for heating oil tank services performed at underground heating oil tank sites. This applies to the following projects:

(a) Decommissioning projects where the tank owner voluntarily requests ~~D~~department approval; and

(b) All underground heating oil tank cleanup projects.

(2) Service providers licensed ~~in accordance with~~ Chapter 340, Division 163 are eligible to submit certified reports.

(3) ~~Any person submitting a c~~Certified reports submitted to the department must include the required filing fee. Table 2 below specifies the fee amounts for each type of project. Certified reports submitted to the Department must be accompanied by the required filing fee of \$50 for decommissioning of a tank with no confirmed release and \$125 for decommissioning of a tank with a confirmed release. Filing fees are non-refundable.

<u>OAR 340-177-0095</u> <u>Table 2</u> <u>Report Submission Fees</u>	
<u>Type of Project</u>	<u>Fee</u>
<u>Decommissioning, no confirmed release</u>	<u>\$100</u>
<u>Decommissioning, with confirmed release, using Soil Matrix Option (Simple Complexity)</u>	<u>\$250</u>

<u>OAR 340-177-0095</u> <u>Table 2</u> <u>Report Submission Fees</u>	
<u>Type of Project</u>	<u>Fee</u>
<u>Using Generic Remedy Option (Intermediate Complexity)</u>	<u>\$350</u>
<u>Using Risk-Based Option (OAR 340-163-0060(1) (Complex))</u>	<u>\$450</u>

(4) Certified reports must contain specific information as set forth below:

(a) For a voluntary decommissioning performed [on or after March 15, 2000](#): The decommissioning report as ~~required by OAR 340-177-0025~~ [requires](#) and decommissioning certification as ~~required by OAR 340-163-0060~~ [requires](#).

(b) For a voluntary decommissioning performed [before prior to March 15, 2000](#):

(A) If the work was performed by a service provider licensed to perform soil matrix cleanup or UST decommissioning at the time the service was provided and two soil samples were collected ~~in as general conformity with the requirements of~~ [OAR 340-177-0025 requires](#), a report that meets the general requirements of [340-177-0025\(3\)](#) is sufficient;

(B) If no soil samples were collected, or if [an unlicensed contractor performed](#) the sampling work ~~was performed by an unlicensed contractor~~, a licensed service provider must conduct a site assessment that meets the requirements of [OAR 340-177-0025\(2\)\(c\)](#) and must include a report that meets the requirements [of 340-177-0025\(3\)](#).

(c) For all heating oil tank cleanup projects, the cleanup certification provided ~~under in accordance with~~ [OAR 340-163-0060](#) must be accompanied by the specific report required by either or both [340-177-0055\(4\)](#) and [\(5\)](#) and [340-177-0065\(2\)](#) based on the cleanup option selected for the site.

(5) ~~The department will provide its Department approval will be provided~~ in the form of a letter to the tank owner, with a copy to the certifying service provider, [indicating that indicates](#) the certified report has been registered and ~~D~~ department files on the project have been closed.

Statutory/Other Authority: ORS 466.706; 466.872

Statutes/Other Implemented: ORS 466.706

History:

DEQ 8-2005, f. & cert. ef. 7-14-05

DEQ 3-2000, f. & cert. ef. 2-17-00

Division 163
REGISTRATION AND LICENSING REQUIREMENTS FOR HEATING OIL TANK
SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS

340-163-0150
Fees

[NOTE: Summary of Changes: [Updates license fees to match 2019 statutes.](#)]

(1) Heating oil tank service providers must pay a non-refundable license fee ~~of \$750~~ for a twelve (12) month license [as listed in Table 1.](#)

<u>OAR 340-163-0150</u>	
<u>Table 1</u>	
<u>Service Providers Fee Schedule</u>	
<u>Date License Application Received</u>	<u>Fee</u>
On or before December 31, 2019	\$750
On or After January 1 to December 31, 2020	\$800
On or After January 1 to December 31, 2021	\$900
On or after January 1, 2022	\$1000

(2) Heating oil tank supervisors must pay a non-refundable license fee ~~of \$150~~ for a twenty-four (24) month license [according to the following schedule:](#)

[\(a\) \\$150 for license applications received on or before December 31, 2019;](#)

[\(b\) \\$200 for license applications received January 1, 2020 or later.](#)

(3) Supervisors taking qualifying examinations [the department](#) ~~administered by the Department~~ must pay an examination fee equal to the cost of administering the examination.

(4) Examination study guides will be made available to the public for the cost of production. Copyrighted reference materials, which may have separate costs charged by the specific organization, are not included with study guides.

(5) [The department will provide R](#)replacement licenses, including name change requests, ~~will be provided by the Department~~ for a [\\$10](#) fee ~~of \$10~~.

Statutory/Other Authority: ORS 465.200 - 465.320 & 466.706 - 466.995

Statutes/Other Implemented: ORS 466.706 & 466.750; 466.868

History:

DEQ 3-2000, f. & cert. ef. 2-17-00

DEQ 15-1991, f. & cert. ef. 8-14-91

DEQ 28-1990, f. & cert. ef. 7-6-90

Division 177

RESIDENTIAL HEATING OIL UNDERGROUND STORAGE TANKS

340-177-0095

Certified Reports

[NOTE: Summary of Changes: Updates filing fees to match 2019 statutes and splits cleanup project fees into three categories.]

(1) The tank owner, or service provider on the owner's behalf, must submit certified project reports and receive the department's approval for heating oil tank services performed at underground heating oil tank sites. This applies to the following projects:

(a) Decommissioning projects where the tank owner voluntarily requests department approval; and

(b) All underground heating oil tank cleanup projects.

(2) Service providers licensed under Chapter 340, Division 163 are eligible to submit certified reports.

(3) Certified reports submitted to the department must include the required filing fee. Table 2 below specifies the fee amounts for each type of project. Filing fees are non-refundable.

OAR 340-177-0095 Table 2 Report Submission Fees	
Type of Project	Fee
Decommissioning, no confirmed release	\$100
Decommissioning, with confirmed release, using Soil Matrix Option (Simple Complexity)	\$250
Using Generic Remedy Option (Intermediate Complexity)	\$350
Using Risk-Based Option (OAR 340-163-0060(1) (Complex)	\$450

(4) Certified reports must contain specific information as set forth below:

(a) For a voluntary decommissioning performed on or after March 15, 2000: The decommissioning report as OAR 340-177-0025 requires and decommissioning certification as OAR 340-163-0060 requires.

(b) For a voluntary decommissioning performed before March 15, 2000:

(A) If the work was performed by a service provider licensed to perform soil matrix cleanup or UST decommissioning at the time the service was provided and two soil samples were collected as OAR 340-177-0025 requires, a report that meets the general requirements of 340-177-0025(3) is sufficient;

(B) If no soil samples were collected, or if an unlicensed contractor performed the sampling work, a licensed service provider must conduct a site assessment that meets the requirements of OAR 340-177-0025(2)(c) and must include a report that meets the requirements of 340-177-0025(3).

(c) For all heating oil tank cleanup projects, the cleanup certification provided under OAR 340-163-0060 must be accompanied by the specific report required by either or both 340-177-0055(4) and (5) and 340-177-0065(2) based on the cleanup option selected for the site.

(5) The department will provide its approval in the form of a letter to the tank owner, with a copy to the certifying service provider, indicating the certified report has been registered and department files on the project have been closed.

Statutory/Other Authority: ORS 466.706; 466.872

Statutes/Other Implemented: ORS 466.706

History:

DEQ 8-2005, f. & cert. ef. 7-14-05

DEQ 3-2000, f. & cert. ef. 2-17-00

Division 163

REGISTRATION AND LICENSING REQUIREMENTS FOR HEATING OIL TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS

340-163-0150

Fees

[NOTE: Summary of Changes: Updates license fees to match 2019 statutes.]

(1) Heating oil tank service providers must pay a non-refundable license fee for a twelve (12) month license as listed in Table 1.

OAR 340-163-0150 Table 1 Service Providers Fee Schedule	
Date License Application Received	Fee
On or before December 31, 2019	\$750
On or After January 1 to December 31, 2020	\$800
On or After January 1 to December 31, 2021	\$900

OAR 340-163-0150	
Table 1	
Service Providers Fee Schedule	
Date License Application Received	Fee
On or after January 1, 2022	\$1000

(2) Heating oil tank supervisors must pay a non-refundable license fee for a twenty-four (24) month license according to the following schedule:

(a) \$150 for license applications received on or before December 31, 2019;

(b) \$200 for license applications received January 1, 2020 or later.

(3) Supervisors taking qualifying examinations the department administers must pay an examination fee equal to the cost of administering the examination.

(4) Examination study guides will be made available to the public for the cost of production. Copyrighted reference materials, which may have separate costs charged by the specific organization, are not included with study guides.

(5) The department will provide replacement licenses, including name change requests, for a \$10 fee.

Statutory/Other Authority: ORS 465.200 - 465.320 & 466.706 - 466.995

Statutes/Other Implemented: ORS 466.706 & 466.750; 466.868

History:

DEQ 3-2000, f. & cert. ef. 2-17-00

DEQ 15-1991, f. & cert. ef. 8-14-91

DEQ 28-1990, f. & cert. ef. 7-6-90