



State of Oregon Department of Environmental Quality

# Draft Fiscal Impact Statement

2019 Heating Oil Tank Program Fees Increase

## Introduction

The Department of Environmental Quality Heating Oil Tank 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. DEQ does not receive general funds to conduct this work.

The HOT program is supported by the service provider licensure and report filing fees defined in OAR chapter 340, divisions 163 and 177. DEQ invites public input on proposed permanent rule amendments, which aim to better sustain the HOT program by increasing these fees.

## Fee Analysis

The Oregon Environmental Quality Commission's approval of this rule proposal would implement increases to existing fees approved in 2019 by the Oregon Legislature toward maintaining 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 by \$100 annually, 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 begin to take effect Jan. 1, 2020, by legislative action. This rule change will align DEQ's administrative rules with the new statutory fee amounts.

## Report filing fees

The tank owner, or service provider on the owner's behalf, must submit certified project reports and receive approval from DEQ 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 increases 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 increase 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 2s. 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 seven-question 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 concurred 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 concurrences:

- 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 will meet in August 2019 to review and provide further input into the proposed fee increases.

DEQ will draft recommendations based on the meeting discussion. DEQ 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.

<b>Current Fees</b>		
Program costs covered by fees	\$338,715/yr (year 2018)	74%
Program costs covered by General Fund	\$0	0%
Fees last changed	2007 – Report filing fees increased 1999 – Licensure and report filing fees established in rule	

<b>Proposed Fees</b>		
Expected change in revenue (+/-)	+ \$383,959 (2019-21)*	100%
	+ \$513,872 (2021-23)	100%
Amount of General Fund required by statute to fund the program	\$0	0%
Amount of General Fund the proposed fees replace	\$0	0%
Expected effective date for projected revenue increases	Jan. 1, 2020 for report filing fees Jan. 1, 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 prior to 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.		

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

# 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 January 1, 2020.

## Statement of cost of compliance

All entities that must 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 Jan. 1, 2020, through the end of year 2021, with a total increase of 33% from the current fee effective as of Jan. 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.

## **ORS 183.336 Cost of compliance effect on small businesses**

- **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 will review and further advise 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

If the committee determines the rule amendments will have a significant impact to small businesses, then, as ORS 183.333 and 183.540 require, the committee will consider how DEQ can reduce the rules’ fiscal impact on small business through at least one of the following:

- Establishing differing compliance or reporting requirements or time tables for small business
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small businesses
- Utilizing objective criteria for standards
- Exempting small businesses from any or all requirements of the rule
- Otherwise establishing less intrusive or less costly alternatives applicable to small businesses

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

## **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.