

Document Review Checklist

- Every document that will be shared with anyone outside of DEQ staff must go through management review. This includes reports and PowerPoint presentations.
- Each required reviewer should add their name and the date when they complete their final review and approve the document for distribution.

Document Review Sign Off Sheet – Meeting Minutes				
Reviewer	Name	Date	Date	Date
Program Mgr.	Mike Zollitsch	8/8/19		
ARC or AQRC				

Mike Kortenhof reviewed final draft and concurred 8/8/19

Advisory Committee – Meeting Minutes

Heating Oil Tank Program Fee Increases, 2019 Rulemaking

Aug. 2, 2019

DEQ Agency HQ, Room 610

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Environmental
Quality

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*DEQ is a leader in restoring,
maintaining and enhancing
the quality of Oregon's air,
land and water.*

List of attendees

- Tess Chadil, on behalf of Darren Blaine, Soil Solutions
- Bill Knutson, K&S Environmental
- Shaun Jillions, on behalf of Jenny Pakula, Oregon Association of Realtors
- Liz Morales, homeowner
- Mike Korten Hof, DEQ
- Jessika Cohen, DEQ
- Ash Desmond, DEQ
- Corin Salnave, DEQ
- Mindy Cobb, DEQ

List of handouts and presentation notes

- Advisory Committee Meeting Presentation (follows agenda and presents proposed changes to rule language)
- Meeting Agenda and Points of Discussion Handout
- Senate Bill 40 – Proposed Amendments
- Draft Fiscal Impact Statement

Agenda

Time	Topic
9:00 a.m.	Introductions
9:15 a.m.	Senate Bill 40 – Development and Implementation
9:30 a.m.	Rule Language – DEQ presented draft language to the committee for discussion
9:35 a.m.	Fiscal Impact Statement – DEQ presented draft to the committee for discussion
9:45 a.m.	Rule and Fiscal Impact Statement discussion
10:00 a.m.	Future Heating Oil Tank Program Development (Points of Discussion)
10:50 a.m.	Next Steps
11:00 a.m.	Adjourn

Meeting Scope

DEQ met with Advisory Committee participants on Aug. 2, 2019 to implementing Senate Bill 40 which concerns HOT Program fee increases. After reviewing the approved statute changes, proposed rule language, and fiscal impact statement, DEQ asked the committee:

- 1) Is the proposed rule language clear?
- 2) Will the rules have a fiscal impact?
- 3) Will the rules have a significant adverse impact on small businesses?
- 4) How can DEQ reduce the economic impact of the rule on small businesses?

To assist future program planning, DEQ also asked the committee for comments about HOT Program operations or implementation needs (see Points of Discussion handout).

Topic: Proposed Rule Language

The Oregon Legislature approved, and the governor signed, Senate Bill 40, June 2019. The bill modifies HOT Program license and report filing fees. The statute explicitly changed license fees. Four tiers for project report filing fees were also established in statute (clean decommissioning, simple cleanup, intermediate cleanup and complex cleanup) and DEQ was directed to amend the rules to feature these fee categories.

DEQ presented draft rule language that specifies the fee amounts provided in SB 40 while associating the three cleanup complexity levels with the three types of corrective action already established in DEQ rule (Soil Matrix, Generic Remedy and Risk Based). The proposed rule amendments present the tiered report filing fees in a table which associates these existing correction action types with the new project report filing fee categories as follows: “Soil Matrix (Simple Complexity),” “Generic Remedy (Intermediate Complexity),” and “Risk-Based Option (Complex).” DEQ suggested that a written paragraph outlining these associations in rule may not be as clear. The draft rule amendments also specify Service Provider license fee increases phased in over the years 2020 through 2022 as established statute.

Discussion

Takeaways and committee responses to each question posed by DEQ are summarized as follows.

Is the proposed rule language for the modified report filing fees as related to project complexity appropriate and clear?

Committee members agreed that the proposed rule language was clear.

Are “Generic Remedy” projects appropriately categorized as “intermediate complexity?”

Committee members discussed the limited use of the generic remedy criteria in site applications. Generic Remedy projects may have similarities to Risk-Based projects, however Generic Remedy projects result in less remaining environmental impact and should require less technical oversight by DEQ. The Committee agrees that Intermediate Complexity is appropriately associated with Generic Remedy projects.

Is the proposed rule language for the phased license fees clear?

Committee members agreed that the proposed rule language was clear.

Does the committee have any other comments?

Committee members expressed concern about project fee increases affecting projects being bid in 2019. DEQ stated that the fee increases become effective Jan. 1, 2020 and apply to report filing fees submitted to DEQ on that date and later. The existing fee structure will continue to apply to project reports submitted to DEQ through the end of 2019. The date the certification was signed does not change the fee owed. Service providers may want to make changes to their contracts earlier to be prepared.

Topic: Fiscal Impact Statement

DEQ presented the draft fiscal impact statement, which had been sent to the committee members ahead of the meeting. The draft fiscal impact statement discusses the potential impact on small businesses and found the effect of the fee increases to be relatively insignificant.

The HOT service provider license fee will gradually increase from the present \$750/year to \$1000/year over a three year period (\$800 in 2020, \$900 in 2021, and \$1000 in 2022). The HOT supervisor license fee will increase from \$150 to \$200 for a 24-month license. The license fees represent a small portion of overall project costs typically passed on to the party who contracts the HOT work (e.g. property owners).

The DEQ project report filing fees increase from \$75 (clean decommission) and \$200 (decommission with a confirmed release) to \$100, \$250, \$350, and \$450 depending on project complexity. These fees are usually charged directly to property owners rather than absorbed by the Service Provider and comprise a small portion of overall project costs without significant fiscal impact on Service Providers.

Discussion

Takeaways and committee responses to each question posed by DEQ are summarized as follows.

Will the rules have a fiscal impact?

Committee members communicated how the fiscal impact of the license fees becomes greater as a Service Provider company becomes smaller. The resulting license fee cost per project rate is higher for smaller companies who may conduct less projects annually compared to larger firms. They stated they have a limited ability to increase base project rates which means the fee increases will reduce profits.

Will the rules have a significant adverse impact on small businesses?

The committee 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.

How can DEQ reduce the economic impact of the rule on small business?

The committee expressed that paper report processing and filing form a significant element of project costs. The committee suggested that electronic reporting would be more efficient and may help offset the time cost of performing HOT work. DEQ agreed that electronic document management is desirable and intends to pursue this improvement within the next year. The committee presented additional suggestions for HOT program improvements, including increased technical and outreach assistance by DEQ to improve property owner understanding of the HOT decommissioning process and associated costs. DEQ concurred with pursuing improvements toward greater program efficiency and effectiveness.

Topic: Future Program Development

DEQ presented points of discussion for future HOT program development and requested comments from the committee. Comments are summarized as follows.

- Buyers often don't understand the meaning of a closure letter. DEQ should consider changing the wording of the closure letter. The letter should include more information clarifying specifics of the situation, such as whether or not a tank was completely removed or decommissioned in place.
- Homebuyers new to Oregon sometimes have no knowledge of the risk concerning heating oil tanks. DEQ outreach could target that audience. The Oregon Association of Realtors conducts a lot of continuing education classes and could continue assisting with sessions about the HOT program and the impacts on homeowners and prospective buyers.
- Soil excavation is increasingly rare; soil gas sampling is utilized to characterize risks instead. Soil Matrix and Generic Remedy options for cleanup are becoming less relevant.

- Existing homeowners want work done the cheapest way; prospective buyers want work done the most protective way. If a project is too expensive, existing homeowners tend to do nothing.
- The spirit of the program was to make it affordable for the homeowners; that focus should be retained.
- Homeowners aren't scientists and do not understand the amount of risk an underground tank can pose.
- Financial assistance provided by the state to homeowners could be helpful and likely increase the number of cleanups.
- Engineers should be consulted on the issue of concrete integrity.
- Regarding soil sampling requirements, testing along supply lines is not required and would add significant expense to a project.
- Groundwater checks are a significant expense; project costs could be minimized if groundwater sampling requirements were narrowed.
- Risk-based closures with no soil gas or groundwater sampling could be more appropriately classified as intermediate complexity.
- Licensing costs more than the project fees due to training and testing fees that are paid to the 3rd party testing firm.
- Some supervisors say that different analytical methods associated with the cleanup project types lead to mistakes in the field.
- DEQ required insurance isn't an issue because contractor liability insurance is needed anyway.
- Some supervisors are uncomfortable reporting their individual name to DEQ. Will the name of the company suffice?
- Decommissioning tanks in place saves considerable labor/expense. Required tank removal may double the costs of projects due to accessibility. The committee urges DEQ to make any process change as clear and transparent as possible.
- If considering additional in-place decommissioning rules the UST program procedures for regulated tanks may be good models.
- For in-place decommissioning, some service providers cut holes in the bottom of every tank to collect environmental samples. Others rarely have technicians enter tanks and only cut tank walls if holes are previously observed.

DEQ has documented these points to address programmatic improvements, which may include additional focus group meetings and future rulemaking.

Next Steps

DEQ thanked the committee for participating and commenting on the proposed rule amendments and fiscal impact statement. These meeting minutes will be posted on the HOT program rulemaking page for public reference during the comment period in September 2019.

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.