



State of Oregon Department of Environmental Quality

Hazardous Waste Program Rulemaking Advisory Committee

Meeting Notes and Committee Recommendations
Sept. 13, 2018

Overview and purpose

The Oregon Department of Environmental Quality is convening advisory committee meetings to review proposed revisions to Oregon's Hazardous Waste program rules and give input on the potential fiscal impacts to businesses. The committee is called the Hazardous Waste Fees Rulemaking Advisory Committee. After considering the proposed fee increase options, DEQ will ask the committee:

- Will the rule have a fiscal impact?
- If so, what is the extent of the fiscal impact?
- Will the rule have a significant adverse impact to small businesses (fewer than 50 employees)?
- If so, how can DEQ reduce the economic impact of the rule to small business?

DEQ proposes to increase fees as part of a multi-phase approach to stabilize funding over the next seven years.

- In **phase one**, the current rulemaking; DEQ is considering increasing annual generator and permit fees.
- In **phase two**, DEQ is considering changing statutory fees through the Oregon legislature and or rule fee changes.
- In **phase three**, DEQ is considering changing statutory fees through the Oregon legislature and/or rule fee changes

The proposed fee increases, along with any additional recommended streamlining efforts such as staff reductions, should help provide funding for EPA-required hazardous waste work and ensure hazardous wastes in Oregon are properly managed. These changes will better position Oregon to maintain its EPA state hazardous waste program authorization.

DEQ will seek public comment on the proposed fee increases when it opens a formal public comment period later this year. DEQ will consider all comments before preparing a final rule proposal package for the Oregon Environmental Quality Commission to consider in mid-2019.

Rulemaking links

- [Hazardous Waste Fees 2019 Rulemaking webpage](#)
- [Advisory Committee Charter](#)
- [First Advisory Committee Slide Presentation \(sans graphics\)](#)

September committee meeting

The second committee meeting was held Sept. 13, 2018, from 9 a.m. to noon in DEQ's 700 Lloyd office in Portland.



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Committee Members

All committee members attended the meeting in person
except where noted with an asterisk*

Name	Affiliation
Keri Bishop	Oregon Health & Sciences University
Jim Denson*	Chemical Waste Management of the Northwest
Michael Doherty	Lotus Precision Coating Inc.
Lori Grant	Oregon Environmental Council
Bruce Johnson	Lonza Group (Bend Research, Inc.)
Kim Kaminski	Chemical Waste Management of the Northwest
Marjorie MartzEmerson	Coyote & Chirp Biosphere, LLC
Matthew Sauvageau*	Safety-Kleen Systems, Inc. (Clean Harbors/Emerald Svcs)
Mike Standen* (<i>partial</i>)	Valliscor LLC
Geoffrey B. Tichenor	Stoel Rives LLP for Oregon Business & Industry



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Committee Member Alternates Attending Not participating

Name	Affiliation
Amber Peterson	Lonza Group (Bend Research, Inc.)



Committee Members
Non-committee, DEQ members at the meeting

Name	Affiliation
Jeannette Acomb	Project Lead, Sr. Hazardous Waste Policy Analyst
Sharon Al-Najran	Project Administrative Assistant
Killian Condon	Generator Rule Lead, Hazardous Waste Inspector
Rich Duval	Permit Rule Lead, Hazardous Waste Inspector
Lydia Emer	Land Quality Administrator
Sandra James	Fiscal Analyst, Office of Policy & Analysis
Sue Langston	Facilitator
David Livengood	Sponsor, HQ Hazardous Waste Program Manager
Denise Miller	Project Coordinator
Eileen Naples	Sr. Hazardous Waste Policy Analyst
Audrey O'Brien	Hazardous Waste Manager, Committee Advisor



Non-Committee Members
Members of the public at the meeting

Name	Affiliation
Sharla Moffett	Western Wood Preservers
Margaret Olson	Environmental Protection Agency State Coordinator
Taylor Tidwell	U.S. Air Force

Meeting discussion summary

At the beginning of the meeting, DEQ staff recapped the scope of the advisory committee, the overview timeline of the proposed multi-phase rulemaking and answers to the key questions from the first meeting. The committee discussion addressed:

1. Options to increase fees to maintain the current service level and meet future needs.
2. Considerations for how to meet future needs such as one single fee increase, a combination of fee increases, and an incremental fee increase.
3. The committee's recommendation on possible solutions for the budget shortfall.
4. DEQ's responses to comments or questions addressed during the meeting.

Below is a brief summary of the meeting presentation and committee discussions.

Presentation – Recap of Overview of the Multi-Phase Timeline

DEQ shared a recap on the multi-phase rulemaking timeline with the committee.

- Phase 1: Change by rule:
 - Generator and permit annual fees
 - Generator factor fee
 - Permit modification fee
- Phase 2: Increase by statute and/or rule
 - Generator annual metric ton fee
 - Generator reporting cap fee
 - Permit renewal fee or other fees
- Phase 3: Increase by rule or statute
 - Any additional funding need

Discussion: The following are highlights of the committee members’ discussion (with DEQ responses in *italics*):

- Can DEQ explain the difference between the generator factor fee and the generator annual metric ton fee? *DEQ provided a diagram presenting the current formula for determining the annual generator invoice amount (similar to example below, metric ton x \$130 or kg. x .13 cents).*

 Example of Current Generator Fee Formula						
Management Method	Annual Amount Managed	Base Fee Per Metric Ton	Fee Factor	Waste Generation Fee	SQG Status Verification Fee	Total Invoice
Landfill Disposal	4 metric tons (8.820 lbs.)	X \$130	X 1.50	= \$780	+ \$300 =	\$1,080

Presentation – Recap of First Meeting

DEQ shared with the committee an overview of the committee’s feedback from the first meeting regarding the impacts of declining revenue:

- DEQ’s ability to meet EPA commitments such as inspection frequency of all large quantity generators once every five years
- DEQ’s ability to meet an ideal level of program work, including technical assistance visits and attendance at other collaborative trainings
- DEQ’s ability to provide geographical coverage as technical assistance providers
- DEQ’s ability to train new staff and cross-train new staff who are replacing retirees.

DEQ also shared the committee's feedback from the first meeting regarding the full service level for DEQ's Hazardous Waste Program. The committee expressed general support for:

- **Inspections:** Large quantity generator and small quantity generator inspections every three years instead of large quantity generator inspections every five years, as required by EPA
- **Technical Assistance:** increasing DEQ's technical assistance from the current level of 30+ site visits, 20 trainings and over 2000 calls annually
- **Other Technical Assistance:** additional assistance including green chemistry and pollution prevention
- **Permitting:** concept that complex regulatory technical assistance is needed to support permitting work
- **Technical Assistance and Compliance:** concept that, if necessary, the same person can perform both technical assistance and compliance functions (though not in the same visit); although the ideal would be different staff performing each function
- **Other work; what else is needed:** Ensuring knowledge is transferred from retirees to new employees, as well as inspector knowledge to technical assistance staff

Discussion: Highlights of the committee members' discussion:

- One committee member asked for a clarification regarding the ideal service level and noted the appropriate level of service will hinge on fee increases along with the impacts to generators. *DEQ responded it will not refer to the committee's response to questions as a consensus but observes the committee generally supported the proposed level of service and DEQ's contributions to the state's hazardous waste management.*

Presentation – Proposed Generator Fee Increase Options

DEQ shared an overview of the generator fee funding with the committee:

- DEQ's hazardous waste program receives approximately \$1.5 million annually.
- DEQ would need a total of \$3.57 million in annual fees by 2026 to fully fund the program using generator fees,
- Currently, DEQ generates about 43 percent of \$3.57 in annual revenue needed. DEQ needs an additional \$2.022 million in funding annually.
- DEQ needs seven full-time employees for generator inspections across the state.
- DEQ has streamlined program costs by not filling vacancies and implementing efficiencies.

DEQ shared three generator fee increase considerations: the Generator Flat Fee, Volume-based Fee and the Management-Method Fee Factor options.

- DEQ may pursue one of the fee increase options, or a combination of options to achieve the increase needed to support the hazardous waste program.
- DEQ developed the proposed fee increase options based on the assumption the number of large quality and small quantity generators, volume of waste generated, and waste disposition method will remain relatively constant over time.
- DEQ considers the proposed fee increase options as draft and subject to further development before DEQ opens for the public comment period later this year.

Note: The options were presented in the meeting as if they were the only options to make the program whole for the needed additional annual revenue. Based on additional input, the proposed increases may include one option or a combination of options or phased in over several years.

Flat Fee Option

DEQ shared an overview of the Flat Fee Option with the committee:

- Option that fully fund the hazardous waste program: the annual small quantity generator base fee would increase from \$300 to \$2,762 (821 percent) and the large quantity generator base fee would increase from \$525 to \$6,421 (1,123 percent).
- Option would generate \$2.022 million in additional revenue above current funding.
- Consideration to combine this Flat Fee option with another fee change and phase in funding in over time.

Volume-Based Fee Option

DEQ shared an overview of the Volume-based Option with the committee:

- To support full service level, increase annual generator fees by:
 - Adding a new volume base of metric tons generated in a year
 - Option has scaled range from less than a metric ton to more than 2000 metric tons
 - Includes an additional fee for those generating more than 2,000 metric tons annually, where each additional 1,000 metric ton beyond the first 2,000 metric tons would be assessed a fee of \$2,000. DEQ stated this option would only affect the top two generators based on 2017 data.

Management Method Fee Factor Option

DEQ shared an overview of the Management-Method Fee Factor Option with the committee to increase four of the current management method fee factors to help incentivize environmentally sound waste management; specifically:

- H061 Fuel burning from 0.75 to 1.00
- H050 Energy recovery from 0.75 to 1.00
- H110 Stabilization from 1.00 to 1.50
- H121 Neutralization from 0.75 to 1.00

In addition, DEQ shared a proposed new management method factor to address government-funded environmental cleanups of brownfields or orphaned industrial property involving hazardous waste residues for off-site treatment or landfill disposal with a management factor of 0.0.

Discussion: The following are highlights of the committee members' discussion:

- Is the Volume-Based Fee Option phased in through 2026? *Selecting this option would not require a phase-in to get us to the 2026 level. However, if we combine the Volume-Based Option with any other option, then a phase-in will be necessary.*
- What happens when the cost of doing business increases in the future? *Assuming the cost of doing business will increase in the future, DEQ will consider adding a consumer price index with the fee increase options. The index may cover cost increases but it will keep DEQ more in step with inflation.*
- Does the Volume-Based Fee option include an activity verification fee? *This option could add or replace the current annual verification fee.*
- Is the Volume-Based Fee increase subject to episodic activity? If so, does it provide a stable and projectable increase in resources? *Episodic waste generation will affect this option; however, DEQ observes the waste generation has been constant.*
- If you were an episodic large quantity generator for a month because of some choice that is made to convert product inventory to waste, how would it look under the flat fee option? *In this scenario, DEQ would charge the generator as a large quantity*

generator for the whole year. Once the hazardous waste is managed off site, they would return to their former generator status.

- *If DEQ implements the Volume-Based Fee Option, would it change other aspects of its current fee calculation? The annual generator flat fee (currently \$300 or \$525, depending on generator status) could be replaced with the Flat Fee or Volume-Based Fee. However, the second portion of the invoice formula (metric tons x \$130 x management method factor) would remain. Yes, this option is based on current number of generators and the 2026 projection.*
- *Recommend only implementing part of the fee increase based on volume because otherwise, DEQ's resources will be impacted by innovations to reduce hazardous waste and your budget will go down. In an ideal management scenario, the DEQ hazardous waste program would require no additional funding. However, while we have observed a decrease in large quantity generators with an increase in small quantity generators, we have responded by streamlining our processes, and do not foresee the program ending in the near future. Over time, our hazardous waste program lost staff, from a high of 50 full time staff to the present 19 staff. We are authorized, but not able to fund, a total of 25 full time staff.*
- *DEQ may generate more revenue by focusing on increasing fees to those generators that receive the economic benefit from the program. DEQ noted the feedback, and shared the program does provide most resources to large quantity generators and small quantity generators, and smaller resources for CEGs.*
- *A bar graph showing the bulk of program activity would help determine where the majority of the program time is being spent. DEQ noted the feedback.*
- *For the Management Method Option, why do you think incineration should be treated the same way as energy recovery? DEQ seeks to incentivize energy recovery.*
- *The Management Method option makes a strong policy statement about certain management options that may generate opposition, and could be viewed as punitive in some circumstances. DEQ noted the feedback.*
- *If DEQ does not phase-in the volume-based method, DEQ will cause some facilities to increase their total outlay for hazardous waste management by a significant amount the first year. Facilities are not forecasting this increase in their current budget. DEQ is considering the option of phasing in increases.*
- *Is the volume component of the current fee structure required by statute? Yes, statute requires the \$130 per metric ton component of the current fee structure. A change to this part of the fee would require a legislative change.*
- *DEQ should consider how fee increases will be passed on to the generators' customer base, including those seeking treatment for cancer in the case of hospitals and academic institutions serving Medicare and Medicaid recipients. DEQ noted the feedback.*
- *Following this rulemaking, will DEQ need to seek changes to the generator cap because the rulemaking itself is not sufficient to meet the hazardous waste program's funding goals? DEQ is focused on this current rulemaking by rule. However, the Advisory Committee should consider the current generator fee cap as it provides input to DEQ.*
- *DEQ should consider expanding the new management fee factor to incorporate non-government funded projects such as brownfield remediation sites. DEQ will consider this feedback to determine the financial and administrative impacts.*
- *How many facilities does the current fee cap impact? Currently, 15 businesses are subject to the fee cap.*

Open Discussion:

After discussion on the shared fee increase options, DEQ invited committee members to provide feedback and ask questions in an open discussion to address the pros and cons of the various fee options.

- Can DEQ implement a charge for technical assistance under rule rather than statute? *DEQ's preliminary review indicates this action is possible but we are still in the process of confirming this approach.*
- DEQ should consider implementing a 10 percent fee increase for all generators in order to avoid another rulemaking. *DEQ noted the feedback.*
- DEQ should look into the option of identifying and charging Conditionally Exempt Generators including auto wreckers, transporters and used oil generators. *DEQ noted the feedback.*
- DEQ should identify the funding that it needs immediately and the funding that it needs over a longer term. *DEQ noted the feedback.*
- DEQ can utilize both the Flat Fee and the Volume-Based Options to meet its funding goals. *DEQ will explore ways to combine multiple fee increase funding options.*
- DEQ can utilize all three options proportionately to the level of services provided. *DEQ agrees this approach may be desirable once the model is completed.*
- All Oregonians should shoulder the burden of the funding increase because all Oregonians are impacted by DEQ's hazardous waste program. *DEQ responded that receiving additional funding from the General Fund is not an option under consideration for the current rulemaking.*
- DEQ should send out information about the outcome of the meetings so that generators can forecast their needs and plan. *DEQ noted the feedback. We will post these notes to the rulemaking website.*
- How do DEQ's proposed fee increase options compare to the hazardous waste program's current spending rate? *The program's current spending rate is \$1,000,000 per biennial. DEQ noted the feedback to consider how the options will influence this rate.*
- Is there any flexibility for timing fee increases? *DEQ noted the feedback, and will consider options of phasing in increases.*

DEQ thanked the committee for participating and commenting on the proposed rules and fiscal impacts. Meeting adjourned.