



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality 2018 WQ Permit Fee Increase Draft Fiscal Impact Statement

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Summary

DEQ proposes rule amendments to increase water quality fees for fiscal year 2019 by seven percent above the fiscal year 2018 fees. These fees apply to National Pollutant Discharge Elimination System permits and Water Pollution Control Facility permits. As part of the rulemaking DEQ also proposes to establish in rule a fee increase for municipal separate storm sewer system permits, commonly called MS4. The MS4 fee increase will be applied to the MS4 annual fees, and is not subject to the seven percent increase for this rulemaking.

The fee increase is needed to help DEQ achieve its objective for a sustainable water quality permitting program that issues timely, high quality permits, as well as ensuring compliance with permit conditions through inspections, enforcement, and reporting to EPA.

DEQ must establish the new fees by November 1, 2018, to cover costs associated with implementing the permitting program and delivering services to regulated entities. Without this increase, DEQ would need to reduce permitting staff and delay implementation of improvements to the program as identified in the document: [Recommendations and Implementation Plan](#). This is an independent third-party consultant report the 2015 Oregon Legislature commissioned. The report was completed in November 2016. Specifically, DEQ proposes the following changes in this rulemaking:

1. Seven percent increase for NPDES and WPCF fees

The seven percent increase is comprised of a three percent increase provided under ORS 468B.051 and a four percent increase provided by Policy Option Package 125 approved in the 2017 Legislative session. Policy Option Package 125 provides resources needed for an effective water quality permitting program. The seven percent fee will be applied to the following permit fees:

- OAR 340-071-0140:
 - Table 9D WPCF Permit Fees
- OAR 340-045-0075:
 - Industrial NPDES and WPCF Individual Permits Application and Modification Fees; Table 70A;
 - Industrial NPDES and WPCF Individual Permit Annual Fees; Table 70B;
 - Domestic NPDES and WPCF Individual Permits, Application, Annual Modification Fees; Table 70C;
 - Domestic NPDES and WPCF Annual Population Fees, Table 70D;
 - Annual Pretreatment Fees, Table 70E;
 - All NPDES and WPCF Permits, Technical Activity, Plan Review and Other Fees, Table 70F;
 - General NPDES and WPCF Permits, Application and Annual Fees (excluding MS4 fees, WPCF 2401, 2402, and 700PM); Table 70G; and

- Underground Injection Control Permits Application Fees, Annual Fees and Surcharges; Table 70I.

2. MS4 fee increase

The 2017-19 Legislatively Approved Budget authorizes DEQ to increase MS4 permit fees to raise an additional \$480,000 in fee revenue for a total of \$600,000 for the biennium (\$300,000 per year). This increase funds two positions to implement the MS4 program. DEQ anticipates the MS4 permit fee increases will initially impact 29 permittees. The MS4 fee increase will be applied to the following permit fees in OAR 340-045-0075:

- Municipal Separate Storm Sewer System, Annual Fees; Table 70H.

The seven percent fee increase will be applied to the following MS4 permit fees in OAR-045-0075:

- Domestic NPDES and WPCF Individual Permits, Application and Annual Modification Fees; Table 70C
- General NPDES and WPCF Permits, Application Fees; Table 70G

3. Fee increase for general permits issued under ORS 468B.050 for motorized in-stream placer mining under permit 700-PM

The 2017 Oregon Legislature passed Senate Bill 3. The bill establishes new restrictions and fees for suction dredge mining in Oregon. This fee change went into effect January 1, 2018. Refer to OAR 340-045-0075, Table 70G. The fees are:

- \$250 for the initial application for or renewal of permit coverage
- \$250 for the annual fee

4. Fee correction: OAR 340-071-0140, Table 9B

Permitting Fees for Systems Not Subject To WPCF Permits, System Type E fee correction from \$1,776 to \$1,763.

5. Fee table clarification: OAR 340-045-0075, Table 70C

This rulemaking restores the WPCF individual permit fee F (domestic) to Table 70C. The WPCF permit type F in Table 70C was inadvertently deleted when the permit type was added to the general permits in OAR 340-045-0075, Table 70G. The WPCF individual permit domestic F permit fees in Table 70C are existing fees and the seven percent increase is applied. Currently, Oregon has 19 active WPCF domestic F permits.

Fee proposal alternatives considered

DEQ considered the following:

Not increasing fees. Without the fee increase, DEQ would be unable to provide ongoing permit program functions at the current service level. DEQ would also be unable to implement recommended program improvements identified in a 2017 audit and report.

Other ways to reduce program costs. DEQ implemented indirect cost saving measures over the past few biennia, such as digitizing permit files that over time might help contain program costs. Additional costs savings comes from extending position vacancies where those vacancies could be absorbed in the short term. However, implementing this alternative on a longer-term basis compromises Oregon's obligation to fund and implement its water quality permitting program.

How long will current fees sustain the program?

The current fees are not sufficient to sustain the program. Foregoing any fee increases would require DEQ to hold positions vacant during the biennium. For example, when developing its 2017-2019 Agency Request Budget, DEQ estimated that even with implementing the three percent annual fee increase in fiscal years 2018 and 2019, it would experience a 4.5 percent revenue shortfall for the biennium. The 4.5 percent revenue shortfall necessitated reducing 2.5 full-time employee positions in order to balance the permit program budget. The Legislature restored one position (1.0 FTE) in Policy Option Package 120, but did not restore the remaining 1.5 FTE. The Legislature’s approval of Policy Option Package 125 authorizes a four percent increase to generate the revenue necessary to fund the four new positions authorized in that package though a mix of fees and Lottery Fund.

How long will the proposed fees sustain the program?

DEQ expects the proposed fees would sustain current program staffing levels through fiscal year 2019, which ends June 30, 2019. To sustain current staffing levels for fiscal year 2020, DEQ will likely need to propose, at minimum, the three percent fee increase allowed in ORS 468B.051.

Budget Comparison Table 1. March 1, 2018 (Permit fees last changed: November 1, 2017)				
	2015-2017 Legislatively Adopted Budget		2017-2019 Legislatively Adopted Budget	
Program costs covered by fees	\$12,023,701	59.5%	\$12,782,995	57.9%
Program costs covered by General Fund and Lottery Fund	\$6,748,498	33.4%	\$7,671,236	34.8%
Program costs covered by Federal Funding	\$1,432,623	7.1%	\$1,609,781	7.3%

Fiscal and Economic Impact

The proposed fee increases will affect individuals, businesses, and government agencies that hold or apply for the following permits:

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

Statement of Cost of Compliance

DEQ does not have data to determine how the proposed fees would affect consumers if a permit holder were to increase the costs of goods and services to offset an increase in permit costs. Additionally, DEQ does not have data to determine how the proposed fees would affect ratepayers if municipal permit holders increase their rates to cover the increased fee.

Federal agencies

1. Seven percent increase for NPDES and WPCF fees

Federal agencies hold approximately 71 permits in Oregon. The fiscal impact to federal agencies depends on the permit type. Examples of the seven percent fee increase on selected permit types are as follows:

- Domestic NPDES permits annual fees for non-lagoon treatment systems will increase by \$153. The WPCF individual permit annual fee will increase between \$90 and \$142 (OAR 340-045-0075, Table 70C).
- Annual fees for general NPDES and WPCF permits will increase between \$23 and \$40. This affects approximately 11 federal agencies (OAR 340-045-0075, Table 70G).
- Annual compliance determination fees for WPCF permits, depending on the type of permit will increase between \$3 and \$71. This affects approximately nine federal agencies (OAR 340-071-0140, Table 9D).

State agencies

1. Seven percent increase for NPDES and WPCF fees

Oregon state agencies hold approximately 116 active water quality permits. The fiscal impact to state agencies depends on the permit type. Examples of the seven percent fee increase on selected permit types are below:

- Industrial NPDES fee permits for Tier 2 sources, dairies and fish hatcheries, and facilities that dispose of wastewater only by evaporation from watertight ponds or basins will increase between \$171 and \$292. This affects approximately five state agencies (OAR 340-045-0075, Table 70B).
- Annual fees for WPCF individual permits will increase between \$90 and \$992. This affects approximately five state agencies (OAR 340-045-0075, Table 70C).
- Annual fees for general NPDES and WPCF permits will increase between \$23 and \$40. This affects approximately 10 state agencies (OAR 340-045-0075, Table 70G).
- Annual compliance determination fees for WPCF permits, depending on the type of permit will increase between \$3 and \$71. This affects approximately eight state agencies (OAR 340-071-0140, Table 9D).

2. MS4 fee increase

Oregon Department of Transportation annual permit fee will be a flat rate of \$40,000 for fiscal year 2019 in the absence of a separate revenue agreement.

Local governments

1. Seven percent increase for NPDES and WPCF fees

Oregon local governments hold approximately 620 total active water quality permits. This count excludes MS4 permit annual fees that are exempt from the seven percent fee increase for this rulemaking. The fiscal impact to local governments depends on the permit type. A local government includes water districts, irrigation districts, cities, towns, ports, sanitary districts, library districts, counties and school districts. For the purpose of this fiscal analysis, DEQ considered Ports and School Districts as separate local governments even if contained within a city or county government. Examples of the seven percent fee increase on selected permit types are as follows:

- Industrial NPDES fee permits for Tier 1 and 2 sources, dairies and fish hatcheries, and facilities that dispose of wastewater only by evaporation from watertight ponds or basins will increase between \$171 and \$292. Approximately eight local governments and their permit co-permittees affected (OAR 340-045-0075, Table 70B).

- Domestic NPDES and WPCF individual permit annual fee increases will range from \$108 to \$5,977. Approximately one local government entity will be affected by the \$5,977 increase, (OAR 340-045-0075, Table 70C).
- Annual fees for general NPDES and WPCF permits will increase between \$17 and \$70. There are approximately 293 local government permits in total. WPCF general permits in this category related to water reuse (e.g., WPCF 2401 and 2402) will not have a fee increase for this rulemaking (OAR 340-045-0075, Table 70G).
- Annual permit processing fees for onsite systems and compliance determination fees for WPCF permits, depending on the type of permit will increase between \$3 for holding tanks to \$71 for onsite sewage lagoon with no discharge. Approximately 67 local government permits affected (OAR 340-071-0140, Table 9D).

2. MS4 fee increase

To meet the \$300,000 per year revenue target the Legislature approved, DEQ developed a new MS4 permit fee structure. The new structure uses a cost-per-person multiplied by the approximate population covered by the permit, except counties where a flat rate is applied depending on the permit category e.g., medium and large, or small. The cost-per-person for fiscal year 2019 is \$0.121.

Permittees under the cost-per-person structure will pay in the range of an additional \$3.77 to \$72,517 over what they paid in fiscal year 2018. Four MS4 permittees will pay less than what they paid in fiscal year 2018, saving between \$340 and \$90 in fees for fiscal year 2019. The Portland Group MS4 permit comprised of the City of Portland and Port of Portland will have the largest increase followed by the Clean Water Services permit, and the Clackamas County Group permit.

Counties in the medium to large category will pay a flat rate of \$15,000. Counties in the small category will pay a flat rate \$2,500. Multnomah County will pay an additional \$10,000 over what they paid in 2018. Fee increases for counties in the small category will pay an additional \$1,573 to \$1,367 over what they paid in 2018.

DEQ

The proposed seven percent fees will increase revenue by approximately \$120,000 in fiscal year 2019. The MS4 fees for fiscal year 2019 will increase revenue by approximately \$240,316.

Public

With existing data, DEQ cannot determine the extent to which the proposed fees would affect each consumer. DEQ anticipates some indirect impact on the public if the permit holder were to increase the costs of goods and services or fees charged to ratepayers to offset the fee increase.

Utilities

The proposed fee increase could have a fiscal impact on utilities resulting in an increase in utility rates if the utility passes the fee increase to its customers or minimizes resources that would otherwise provide customers services and maintain infrastructure.

Large businesses – businesses with more than 50 employees

The seven percent fee increase would affect approximately 150 wastewater permit holders that are large businesses. No information is available to determine how the fee increases would affect each individual permit holder or how each permit holder may elect to pass on or incorporate fees into their current business model.

Small businesses – businesses with 50 or fewer employees ORS 183.336

According to 2017 data from the Oregon Employment Department, approximately 3,300 small businesses hold water quality permits and may be affected by the fee increase. However, no information is available to determine how the fee increases would affect each permit holder. Fiscal impact to a small business depends on the type of permit issued, for example, new application fee increases would range from \$91 to \$2,760.

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

DEQ estimates the fee increases for wastewater permits would affect approximately 3,300 small businesses.

Examples of small businesses that have wastewater permits are food processors, mining operations, dairies, fish hatcheries, smelting and refining operations, timber processing, wood products manufacturing, retail operations, seafood processors, gravel mining, wineries, seasonal fresh pack operations, petroleum hydrocarbon cleanup operations, and vehicle and equipment wash water operations.

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

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

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

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

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

DEQ will meet with a Fiscal Advisory Committee composed of a diverse group of stakeholders representing a wide-cross section of DEQ's permit holders on April 12, 2018.

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

Documents relied on for fiscal and economic impact

Document title	Document location
Fee increase calculations	DEQ Headquarters
DEQ 2017-2019 Legislatively Approved Budget	DEQ Headquarters
DEQ's water quality permit database	DEQ Headquarters
DEQ Policy Option Package 125	DEQ Headquarters
Businesses by size or firm of 50 or fewer employees	Oregon Employment Department website reports 875 Union Street NE Salem OR 97311 https://www.qualityinfo.org/bi

Advisory committee

DEQ established a workgroup to review options to increase MS4 fees to support the 2017-19 legislatively adopted budget. Membership in the MS4 fee workgroup included representatives from MS4 permittees, Oregon Association of Clean Water Agencies, League of Cities, Special Districts, Association of Oregon Counties, and others interested in the MS4 program. The workgroup provided input rather than endorsement of fee concepts. DEQ structured the revised MS4 fee table to achieve the new revenue target of \$300,000 per year. The MS4 fee workgroup members convened for two meetings in late 2017 and early 2018.

DEQ solicited the Fiscal Advisory Committee specifically to address the proposed WQ Permit Fees in OAR 340 divisions 45 and 71. Membership in the Fiscal Advisory Committee includes representatives from diverse stakeholders including local governments, domestic and industrial permit holders, environmental and citizen involvement organizations. The Fiscal Advisory Committee will meet to review the proposed rule updates including the MS4 fees, and to assess and comment on the fiscal impacts of DEQ's proposed permit fee increase.

As ORS 183.333 requires, DEQ asked for the Fiscal Advisory Committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses and complies with ORS 183.540.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ anticipates a builder would pass the increased permit cost onto the homebuyer. DEQ determined the proposed rules would do the following:

- Affect the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached single-family dwelling on that parcel.

- Require a builder of a 6,000-square-foot parcel to pay an additional \$20 for a construction stormwater permit if the parcel is part of a common plan of development disturbing one or more acres. This would increase the fee from \$288 to \$308.
- The proposed rule may not affect a builder of a 6,000-square-foot parcel that is not part of a common plan of development disturbing one or more acres because there is no requirement for these parcels to have a construction stormwater permit from DEQ.

DEQ prepared this statement to support increase water quality fees for fiscal year 2019.