



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Meeting

July 21-22, 2022

Item F: Temporary rulemaking (Action) Asbestos Fees Temporary Rule 2022

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DEQ Recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

- Determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the parties concerned as provided under the Justification section of this staff report.
- Adopt TEMPORARY rules as seen on page 11 of this report as part of Chapter 340 of the Oregon Administrative Rules to be effective beginning on July 22, 2022.

Overview

DEQ is seeking a revision to the 2022 Asbestos Fee Increase rules contained in OAR Chapter 340, Division 248 to incorporate the fee increase for certification of asbestos workers and supervisors, and for licensing of asbestos abatement contractors.

These fees were brought to the fiscal advisory committee on Jan. 18, 2022, and were approved by the EQC on May 19, 2022. The original public notice and staff report contained tables and narrative information with the correct fee increases for all asbestos fee categories; however, the redline draft rules approved by the commission omitted the intended fee increase in the asbestos certification and licensing fee categories.

Temporary rules expire after 180 days and DEQ intends to propose that the commission delegate the authority for permanent rulemaking to Director Whitman. DEQ will propose to make the fee increases of this temporary rule permanent no later than mid-December 2022.

Statement of Need

The asbestos program serves multiple important purposes. In addition to implementing federal requirements for asbestos, the program ensures asbestos abatement projects are performed safely and that asbestos containing materials are handled and disposed of properly. The program protects the public from airborne asbestos, a known human carcinogen.

The asbestos program is completely funded by fees. These include project notifications, abatement contractor licensing, worker and supervisor certification, and training provider accreditation. The last increase in notification fees occurred in 2007, and the last increase in licensing, certification and accreditation fees occurred in 1992. Regulations have become more complex increasing the demand for technical assistance, and the number of notifications submitted has grown by approximately 250 percent since 2015. This fee increase is essential to maintain a program that provides oversight and protection for the public and asbestos abatement professionals.

Justification

OAR 340-248-0180

The proposed action to adopt temporary rules and move forward with the fee increase for asbestos certifications and licensing will allow the asbestos program to maintain current service levels. Failure to act promptly will keep the program from operating in a way that protects public and worker health by providing technical assistance, collaborating with local, state, and federal agencies, conducting asbestos abatement project inspections, and investigating and addressing violations that endanger public health.

Adoption of temporary rules is needed to bring the Asbestos Program fees into alignment with what was intended for the May 19, 2022, rule adoption.

Rules Affected, Authorities, Supporting Documents

Lead division

Air Quality Division

Program or activity

Asbestos Program

Chapter 340 action

Adopt

Rules Amended - OAR
340-248-0180

Statutory authority

Statutory Authority – ORS		
468.020	468.065	468 & 468A

Statute implemented

Statutes Implemented – ORS		
468A.745	468.020	468A.025

Legislation

HB5017, Policy Option Package 114, March 2021

Documents relied on for rulemaking

Document title	Document location
Asbestos Fees 2022 EQC Staff Report	https://www.oregon.gov/deq/EQCdocs/051922_C_AsbestosFees.pdf
Asbestos Fees 2022 Public Notice	https://www.oregon.gov/deq/rulemaking/Documents/asbFees2022pnp.pdf

Housing Costs

As ORS 183.534 requires, DEQ evaluated whether the proposed rules presented to EQC on May 19, 2022, would influence 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 determined the proposed rules might influence development costs. A vacant parcel would not be affected, but a parcel with required demolition would be affected as the standing structure may be subject to the asbestos regulations in OAR 340-248. Property owners may be subjected to the potentially increased costs due to fee increase for the asbestos abatement service provider. Any estimate of possible financial impact would be speculative because individual abatement contractors set their own pricing for services.

Racial Equity

DEQ determined that the increase of fees may affect racial equity in the state. Many certified asbestos workers and certified asbestos supervisors are BIPOC. Frequently, they are responsible for their own certification fees. To minimize the impact of the fee increase, DEQ, in agreement with the Fiscal Advisory Committee, chose the option with the lower, one-time increase for certifications.

Fee Analysis

The proposed temporary rules would increase existing fees for certification of asbestos workers and supervisors, and for licensing of asbestos abatement contractors. EQC authority to act on the proposed fees is ORS 468A, 468.020, and 468A.025.

Brief description of proposed fees

On May 19, 2022, DEQ proposed to increase fees associated with the Asbestos Program sufficient to generate an additional \$300,000 in revenue annually. This included an increase in notification, licensing, certification and accreditation fees. The temporary rule will correct the omitted fee increases for certification and licensing.

Reasons

The temporary rule would address the legislatively approved changes to DEQ's budget. Policy Option Package 114, approved in the 2021 legislative session, authorizes an additional \$300,000 in revenue annually to sustain the increased costs of the asbestos program.

The temporary rule would address increased program and staff costs. Asbestos notification fees were last raised in 2007, and licensing, certification and accreditation fees were last raised in 1992.

The temporary rule would allow the asbestos program to maintain current service levels and protect the public and worker health by providing technical assistance, conducting abatement project inspections, and investigating and addressing violations that endanger public health.

Fee payer

Fee payers are asbestos abatement contractors and certified asbestos workers and supervisors. Fee payers may also include homeowners and/or property owners who are indirectly affected when hiring asbestos abatement contractors.

Affected party involvement in fee-setting process

DEQ convened a Fiscal Advisory Committee including appointees representing a variety of industries directly and indirectly affected by the proposed fee increase. The FAC met on Jan. 18, 2022, to discuss ways to employ the fee increase to allow DEQ to generate the required revenue.

Summary of impacts

Impacts to asbestos fees include increasing

- Certification fees by 26 percent, and
- Licensing fees by 27 percent.

Asbestos Fees		
Worker and Supervisor Cards	Current Fee	Increased Fee
Initial Worker Certification	\$45	\$57
Refresher Worker Certification	\$45	\$57
Initial Supervisor Certification	\$65	\$82
Refresher Supervisor Certification	\$65	\$82
Abatement Contractor License	Current Fee	Increased Fee
New Contractor License	\$1,000	\$1,270
Contractor License Renewal	\$1,000	\$1,270

Current and proposed fee information

Current Fees		
Program costs covered by fees	\$1,192,457	100%
Program costs covered by General Fund	\$0	0%
Fee Last Changed	1992 (Licensing, Certification)	

The two tables below are the summary of revenue based on the fee increases as intended for May 2022. The proposed temporary rules are one portion of the overall revenue for the Asbestos Program.

Proposed Fees		
Expected change in revenue (+/-)	\$300,000	~25%
Main GF required by statute/rule to fund program	\$0	0%
Proposed fee allows General Fund replacement	\$0	0%
Expected effective date	July 1, 2022	

Transactions and Revenue*				
Biennium	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
FY2021	5472	5472	\$0	\$1,192,457
Next FY**	5472	5472	\$300,000	\$1,498,427

*This table's data is approximate. Some transactions in the asbestos program cover multiple purchases (i.e., multiple worker or supervisor cards purchased at once). Most abatement contractors submit multiple notifications annually, so the number of payers may not be accurate. The number of transactions does not necessarily reflect the number of payers.

**The total revenue for the next fiscal year assumes the same revenue as FY2021, with the additional revenue from factoring in the fee increase.

Public Notice

DEQ is not required to provide advance public notice before adopting a temporary rule. DEQ did not issue specific notice for this proposed temporary rule, since the intent of the temporary rule is to fulfill the intended prior action to revise Asbestos Program fees.

EQC Prior Involvement

DEQ presented the Asbestos Fees 2022 staff report and draft rules to EQC for adoption on May 19, 2022, and in the Director's report at the Feb. 3, 2022, meeting.

Implementation

The temporary rule and corrected fees would become effective on July 22, 2022. Temporary rules expire after 180 days and DEQ intends to propose that the commission delegate the authority for permanent rulemaking to Director Whitman. DEQ will propose to make the fee increases of this temporary rule permanent no later than mid-December 2022.

Notification

DEQ would notify affected parties by email to each asbestos abatement contractor and GovDelivery.



State of Oregon Department of Environmental Quality

Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

Division 248

ASBESTOS REQUIREMENTS

340-248-0180

Licensing and Certification Requirements: Fees

(1) DEQ may assess the following fees to provide revenues to operate the asbestos control program.

(a) Contractor Licenses: A non-refundable license application fee of \$~~1000~~1,270 for a one-year Asbestos Abatement Contractor license;

(b) Worker and Supervisor Certifications: A non-refundable application fee of \$~~65~~82 for a one-year certification as an asbestos supervisor and \$~~45~~57 for a one-year certification as an asbestos worker;

(c) Training Provider Accreditation: A non-refundable accreditation application fee of:

(A) \$394 for a one-year accreditation to provide a course for training asbestos supervisors;

(B) \$394 for a one-year accreditation to provide a course for training asbestos workers; and

(C) \$394 each for a one-year accreditation to provide a course for refresher training for Oregon asbestos certification.

(d) Asbestos Abatement Project Notification fee required under OAR 340-248-0260.

(2) Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

Statutory/Other Authority: ORS 468 & 468A

Statutes/Other Implemented: ORS 468A.745



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Draft Rules – Edits Incorporated

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- (b) Worker and Supervisor Certifications: A non-refundable application fee of \$82 for a one-year certification as an asbestos supervisor and \$57 for a one-year certification as an asbestos worker;
- (c) Training Provider Accreditation: A non-refundable accreditation application fee of:
 - (A) \$394 for a one-year accreditation to provide a course for training asbestos supervisors;
 - (B) \$394 for a one-year accreditation to provide a course for training asbestos workers; and
 - (C) \$394 each for a one-year accreditation to provide a course for refresher training for Oregon asbestos certification.
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Statutory/Other Authority: ORS 468 & 468A

Statutes/Other Implemented: ORS 468A.745