



State of Oregon Department of Environmental Quality

Draft Racial Equity Statement

Fuel Tanks Seismic Stability 2023 Rulemaking Advisory Committee Meeting 4

This is a draft racial impact statement developed by DEQ for the Fuel Tanks Seismic Stability Rulemaking. This document is being presented to the Rules Advisory Committee for discussion. The RAC's input will be reflected in the final version included in the public notice.

Scope and issues addressed by the proposed rule

DEQ is conducting the rulemaking to implement the fuel tank seismic stability requirements enacted in [Senate Bill 1567 \(2022\)](#). The bill requires operators of large capacity fuel handling facilities to assess their facility's ability to withstand a magnitude 9 Cascadia earthquake event and propose mitigation to minimize risk. The rule outlines the Seismic Vulnerability Assessments and the proposed Risk Mitigation Implementation Plans criteria and approval process.

Requirement

[ORS 183.335\(2\)\(a\)\(F\)](#), as amended by [House Bill 2993 \(2021\)](#), requires state agencies, when providing notice of a rulemaking, to provide a statement identifying how adoption, amendment or repeal of the proposed rules will affect racial equity in the state. Statute language: ORS 183.335(1)(a) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action. The notice required by subsection (1) of this section must include a statement identifying how adoption of the rule will affect racial equity in this state ORS183.335 (2)(a)(F).

What does “Racial Equity” mean?

HB 2993 does not define “racial equity”, and there is no one meaning of the phrase as a term of art – many different meanings have been suggested. In legislative history, legislators acknowledged that there is no clear meaning of the phrase, and they did not attempt to provide one. Courts interpreting undefined phrases that have no fixed meaning as a term of art, give the words their ordinary meaning. The ordinary meaning of “racial equity” is treating people of all races fairly, justly and without bias. A statement of how a rule will affect “racial equity”, means how the rule will affect the fair, just and unbiased treatment of people of all races.

Reference definitions from [House Bill 4077 \(2022\)](#)

HB 4077 established the Environmental Justice Council within the office of the Governor. The bill requires that The Environmental Justice Council with staff support from the Department of Environmental Quality, in collaboration with the office of Enterprise Information Services, the Institute for Natural Resources, the Portland State University Population Research Center, other natural resources agencies and the Oregon Health Authority, develop an environmental justice mapping tool. An inclusive community engagement process to receive input from communities across this state is required by this new law.

“Equity analysis” means an analysis used to determine or evaluate environmental justice considerations.

“Fair treatment” means that no one group of people, including racial, ethnic or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal environmental programs and policies.

“Environmental justice” means the equal protection from environmental and health risks, fair treatment and meaningful involvement.

Equity beyond racial considerations

The definition of equity should be ever-changing and responsive depending on who is impacted by a cause and how the effects of this cause are experienced. At large, it is a concept meant to provide resources depending on need, understanding that not one person, community or environment will need the same resources. Societal and structural barriers can stand in the way of one’s access to resources and contribute to an inequitable structure that oppresses various groups in disparate ways. Equity must expand beyond fiscal and racial considerations. Vulnerability assessments can guide direction, but they must be accompanied by accountability measures to adequately protect environments and communities.

According to Federal Emergency Management Agency’s report to the National Advisory Council ¹, the core definition of equity is providing the greatest support to those with greatest need to achieve a certain minimum outcome. An equitable policy means providing more support to people with more need. By perpetually assisting larger communities that already have considerable resources, the smaller, less resource-rich, less-affluent communities cannot access funding to appropriately prepare for a disaster, leading to inadequate response and recovery, and little opportunity for mitigation. Through the entire disaster cycle, communities that have been underserved stay underserved, and thereby suffer needlessly and unjustly. The marginalized communities tend to be both the most exposed to damage and least able to recover financially.

¹ FEMA National Advisory Council Report
https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf

PSU Environmental Justice Study

As part of this rulemaking, DEQ has contracted with Portland State University's Institute for Sustainable Solutions to conduct an environmental justice review using a social vulnerability assessment model and community focus groups to understand community's perspective on fuel storage facilities and to identify areas of concern. The study consists of geospatial regional and site-specific analyses of Columbia, Lane and Multnomah counties, field analysis and focus group community discussions. The spatial analysis of social vulnerability revealed that there were varying patterns across different areas. The study considers the following demographic factors²:

- Population density – more populated communities require more resources prior to, during, and after a hazard event;
- Population over 65 years of age – older people require more assistance during and after a hazard event;
- Non-White Population – need more resources to recover after a disaster;
- Population without high school diploma – have less access to information and resources;
- Renters – have fewer resources to recover after a disaster;
- Low-income population – fewer resources before, during and after a hazard event;
- Linguistically isolated population – require more assistance and outreach before, during and after a hazard event.

Categories not addressed in the PSU study but mentioned in the Eugene-Springfield Climate and Hazard Vulnerability Assessment³ include:

- Population with flammable roof, vegetation within 10 meters of home;
- Geographically isolated population;
- Population isolated from public agencies for fear of interacting with public agencies;
- Population without health insurance;
- Population without a vehicle;
- Disabled; and
- Institutionalized.

In addition, the houseless population is also disproportionately exposed to environmental and industrial hazards. The environmental justice mapping tool being developed under HB 4077 will

² Social Vulnerability to Environmental Hazards
<https://onlinelibrary.wiley.com/doi/abs/10.1111/1540-6237.8402002>

³ Eugene-Springfield Climate and Hazard Vulnerability Assessment
www.eugene-or.gov/DocumentCenter/View/20644/2014-EugeneSpringfield-Climate-and-Hazards-Vulnerability-Assessment

include a wide variety of additional social vulnerability indices and will be available for use by September 2025.

The PSU study's preliminary results show that in Multnomah County, the census block groups that are located between multiple fuel facilities, especially those directly adjacent to industrial areas in northwest Portland and the Portland airport, are of particular concern and contain numerous socially vulnerable neighborhoods. Approximately 32% of all child daycare centers in Multnomah and Washington counties are situated within the four-mile radius of the fuel terminals, as are 38% of all nursing homes. In Lane County, the area around the fuel storage facility exhibits high social vulnerability and a greater proportion of socially vulnerable neighborhoods are found within a four-mile radius as compared with the rest of the county. In this county, more than 28% of senior homes, as well as about 31% of child daycare centers are situated within the four-mile radius of the fuel storage facility. Columbia County analysis did not identify any high social vulnerability areas in the vicinity of the fuel storage facilities.

The PSU team of researchers assisting with this rulemaking also investigated the funding and grant opportunities to facilitate earthquake preparedness and risk mitigation work related to the safety of the neighboring communities.

Bulk fuel terminals store and transfer products derived from petroleum and plant sources.

They can release air contaminants during tank truck and rail car loading, fuel storage and vapor leaks from pumps, valves, and other equipment. The employees of the facilities and the residents of the neighborhoods adjacent to fuel terminals are disproportionately affected by health and safety risks and environmental impacts. Some of the neighborhoods near the facilities related to this rulemaking have populations with higher levels of all six social vulnerability criteria compared to the county and Oregon as a whole.

The facilities located on liquifiable soils vulnerable to earthquakes pose potential major health, safety, and fuel spill risks. Communities that are adjacent to or near fuel terminals are disproportionately impacted by emissions and safety risks are traditionally lower-income and have a higher percentage of Black, indigenous, and other residents who are people of color. These communities subjected to environmental injustice have been historically overburdened by environmental hazards and also being impacted by climate change first and hardest⁴, as evidenced by the 2019 heat wave. Climate change and air pollution represent additional cumulative impacts that exacerbate the disparities between different racial groups in Oregon. Lower-income Oregonians are disproportionately non-white⁵ and are more likely to work in frontline occupations. Frontline workers, and especially those that work outdoors such as fuel

⁴ Oregon Health Authority Climate and Health in Oregon report:

<https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/Climate%20and%20Health%20i%20Oregon%202020%20-%20Full%20Report.pdf>

⁵ US Census Bureau's American Community Survey:

<https://data.census.gov/cedsci/table?q=United%20States&t=Income%20and%20Earnings&q=0400000US41&tid=ACSST5Y2020.S1903>

terminals workers bear disproportionate exposure to the negative impacts of climate change, worsening air quality and any potential natural disasters.

This rulemaking is intended to prevent facility failure through seismic retrofits, replacement, relocation and other safety upgrades and maintenance improvements requirements at largest bulk fuel terminals in Oregon.

This rule and program implementation improves and addresses racial equity by:

- 1) Preventing spills and resulting damage after an earthquake, especially for the workers and residents in the immediate area
- 2) Encouraging public participation in the Risk Mitigation Implementation Plans approval process. DEQ hopes to receive and address comments regarding the potential damage concerns and resources needed by communities due to uncertainty in the level of protectiveness.

Implementing this work will center health and safety of the facilities employees and nearby residents and environment. The proposed rules will reduce existing risk born by those working and residing near the fuel terminals by decreasing the terminals vulnerability to earthquakes and reducing the health and safety concerns caused by potential oil spills and fires caused by earthquakes and other earthquake-related secondary effects. The program created by these rules will regulate fuel terminals' Seismic Vulnerability Assessments, the Risk Mitigation Implementation Plans and the mitigation actions implementation and will create a long-term positive impact on equity and environmental justice in the state by making the fuel facilities more resilient to earthquakes and less prone to a disaster caused by a potential earthquake and its secondary effects.

As the program evolves, DEQ anticipates further development of additional equity- and environmental justice- promoting measures such as:

- Collaborating with local and regional agencies to address public health and safety of the communities in the vicinity of the fuel terminals.
- Collaborating with the facilities on designing Seismic Vulnerability Assessments and Risk Mitigation Implementation Plans tailored to address the potential specific harm while incorporating environmental and biodiversity perspectives.
- Using of enforcement fines to fund [Supplemental Environmental Projects](#) to benefit the communities surrounding the fuel terminals.
- Encouraging ongoing facility and community communication.
- Conducting additional outreach and education in the most impacted communities.
- Advancing procedural equity by integrating the frontline communities near the fuel terminals in the decision-making during rulemaking and rule implementation process.
- Incorporating existing environmental justice studies and eventually the environmental justice tool developed under HB 4047 when making Seismic Vulnerability Assessments and Risk Mitigation Implementation Plans approval decisions to avoid any decisions that may undermine environmental justice.
- Assisting the communities with creating external alarm and emergency plans to address the post-implementation residual risk.

- Involving frontline communities, independents consultants, other state agencies and Environmental Justice Council in the Seismic Vulnerability Assessments and Risk Mitigation Implementation Plans reviews to ensure equitable lens throughout the process.
- Considering the environmental justice issues including frontline communities' concerns and public participation processes when making recommendations to Oregon legislature.

Translation or other formats

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800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

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