

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 4, 2007

To: Environmental Quality Commission

From: Stephanie Hallock, Director

Subject: Agenda Item F, Rule Adoption: Water Quality Permit Fee Increase and Criteria for Termination of Septic Permits
June 21-22, 2007, EQC Meeting

Why this is Important This proposed rulemaking provides fee revenue for administering DEQ's National Pollutant Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permit programs, and simplifies regulation of onsite septic systems.

Department Recommendation The Department recommends that EQC adopt the proposed amendments to OAR Division 45 as set out in Attachment A of the Staff Report for agenda Item F.

Background and Need for Rulemaking Fee Increase
This fee increase would enable continuation of the implementation of the Blue Ribbon Committee's (Committee) recommendations for improving Oregon's wastewater permitting program. The Committee – comprised of industry, environmental, and local government representatives – convened in 2002 and made a variety of recommendations to improve water quality permitting and simplify DEQ's permit fee structure. Recommendations also included a modest annual fee increase to help address increasing costs associated with administering DEQ's water quality permit programs.

The 2005 Legislature incorporated the Committee's recommendation for annual fee increases into Senate Bill 45 (codified in ORS 468B.051), which states that "Not more than once each calendar year, the Environmental Quality Commission may increase the fees established under ORS 468.065 for permits issued under ORS 468B.050. The amount of the annual increase may not exceed the anticipated increase in the cost of administering the permit program or three percent, which ever is lower." This fee increase mechanism is intended to help DEQ address water quality program salary and benefit cost increases.

In July 2006, the EQC increased wastewater permit fee revenue by 11 percent to fund positions that would otherwise have been lost and to add 2.5 new positions. This proposed fee increase is DEQ's first implementation of the annual fee

increase authorized by Senate Bill 45.

For the purposes of the proposed fee increase, DEQ compared the estimated wastewater permitting costs for 2005-2007, and projected costs for 2007-2009 with the same staffing levels as at the end of the fiscal year 2007. DEQ found a 13.9 percent increase in costs from biennium to biennium, which is well over the three percent annual increase allowed by Senate Bill 45.

This rulemaking increases permit fees three percent for all NPDES and WPCF permit holders, except for suction dredge permittees whose fees are set in statute. Lacking adequate resources to conduct outreach to WPCF onsite permit holders and not wanting to increase fees without public outreach, DEQ also excluded WPCF permits issued under DEQ's onsite (septic system) program. The rulemaking also addresses some minor errors in the fee tables included in the 2006 rulemaking. Fees referred to in OAR 340-045-075 but inadvertently left out of Tables 70A and 70C in last year's rulemaking have been reinserted. In Table 70G, three of the permit category descriptions have been modified to be consistent with the cover page of the applicable general permit, and a column with the designations NPDES and WPCF has been added for clarity.

Onsite Septic Permit Rules

Most individual onsite sewage disposal systems are authorized under a one-time construction permit issued under OAR chapter 340, division 71. The statutes governing this program allow counties to act as DEQ's agent for approving these construction permits. Twenty three counties perform the permitting function as DEQ's agent, while DEQ itself operates the program in 13 counties.

Historically, septic systems using innovative technology were required to have DEQ-issued conventional water pollution control facility permits. The permits are expensive, require more reporting, must be renewed every ten years, and are more appropriately issued to large commercial facilities.

In March 2005, the EQC adopted a rule change that allowed innovative onsite septic systems to be regulated under county-issued construction permits instead of DEQ-issued permits. A component of this rule change allowed permit holders of existing DEQ-issued permits to terminate their permits and operate their systems under county-issued construction permits if they met certain criteria. While many of these permits were converted, some were not because they did not meet all of the criteria.

This proposed rulemaking allows more onsite septic permit holders to terminate their DEQ-issued permit and instead operate under county-issued permits. Qualifying permit holders will pay less in fees, but will be required to maintain a

service contract with a maintenance provider and submit an annual report to the county regarding the system's performance.

Effect of Rule

Fee Increase

As a result of this rulemaking, fees for all permits will increase by three percent except for onsite septic systems and suction dredge permits (General Permit 700-PM). Fees for the suction dredge permit are set in statute and therefore can only be changed by the legislature.

Onsite Septic Permit Rules

Changing the rules to provide criteria under which homeowners and small businesses with onsite septic systems may terminate their permits with DEQ will deregulate between 20 and 30 permit holders (less than five percent of approximately 730 systems covered). Those persons who terminate their onsite septic permits will continue to operate under the same level of protection as under DEQ-issued permits; experience less burdensome regulation; and will pay an annual fee of approximately \$50 (fee varies by county) instead of \$300. The permit holders' cost savings can be applied toward the service contract for ongoing maintenance of the system.

This rule change will apply in all counties, regardless of who administers the program for the county. Any former permit holder failing to maintain a septic system service agreement and/or failing to submit an annual report to the county may be required by DEQ to revert back to DEQ regulation.

Commission Authority

The Commission has authority to take this action under ORS 454.625, 468.020, 468.065, and 468B.051.

Stakeholder Involvement

The Blue Ribbon Committee served as the advisory committee to DEQ on the proposed fee changes. The committee met with DEQ in the fall of 2006 and was given a chance to review and comment on the changes being proposed. Staff received no comments on the proposed changes.

DEQ staff presented the onsite septic permit rule changes at contract county meetings, an annual onsite septic conference, and at an Oregon Onsite Wastewater Association meeting. At these meetings, staff received comments supportive of the rule changes.

Public Comment

A public comment period addressing both the fee increase and onsite septic permit rules extended from February 1, 2007 to March 2, 2007 and included public hearings in Eugene, Bend, Medford, Pendleton, and Portland. Results of public input are provided in Attachment B. In summary, DEQ received no written or oral comments.

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- Key Issues** No key issues were raised during the rulemaking process.
- Next Steps** DEQ will update its fee tables and web site to reflect the fee increase. Staff will inform permit coordinators and all water quality staff of the proposed changes to the fee and onsite septic rules.
- Attachments**
- A. Proposed Rule Revisions
 - B. Summary of Public Comments and Agency Responses
 - C. Presiding Officer's Report on Public Hearings
 - D. Relationship to Federal Requirements Questions
 - E. Statement of Need and Fiscal and Economic Impact
 - F. Land Use Evaluation Statement
- Available Upon Request**
- 1. Legal Notice of Hearing
 - 2. Cover Memorandum from Public Notice
 - 3. Advisory Committee Membership and Report
 - 4. Rule Implementation Plan

Approved:

Section: _____

Division: _____

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