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Drywell Permitting Becomes More Formalized and it Affects Most Real Estate Owners in Oregon

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Most commercial or multifamily properties have parking lots, and most of these parking lots may have drywells. This affects real estate investors because if you buy or sell a property, you may need to prove that your drywells are registered. We recently had an environmental engineer call out the registration issue in an environmental Phase One report and the bank that was financing the deal required us to either prove there were no drywells or register the parking lot drains as drywells. As you can imagine that gets complicated.

The Oregon Department of Environmental Quality (DEQ) is responsible for enforcing the EPA clean air and water regulations and have deputized the DEQ to enforce the rules. The Oregon DEQ underground injection control (UIC) program monitors and registers these systems.

As of October 1, 2021, DEQ has made it easier to register these dry wells by creating an online system for operators, managers, and environmental consultants to register drywells with the state of Oregon. This system allows easier access to DEQ, but it still may take 45 – 90 days for DEQ to review applications from operators to ensure that the systems are compliant and do not have a detrimental impact on the groundwater and follow federal and state regulations.

Here is the tough part

If an owner or operator of a system cannot provide the required registration data to determine if the system is “rule authorized”, then they must either:

- Close the injection system and find an alternative method of disposal;
- Hook up, if available, to the local municipal stormwater sewer;
- Modify/update the existing system to meeting the rule authorization requirements, or
- Apply for a DEQ Water Pollution Control Facilities permit (general or area wide).

https://www.oregon.gov/deq/wq/wqpermits/Pages/UIC-Rule-Authorized.aspx

Fees for the UICs are as follows:

Fees for stormwater UICs depend on whether the UIC is authorized by rule or by permit.

As of fall of 2021, the fees for authorization by rule are:

- $107 per UIC for UICs that discharge roof-only runoff (commercial, industrial, and triplex or larger residential).
- $134 per UIC for UICs in drainage basins with less than 1,000 vehicle trips per day.
- $321 per UIC for UICs in drainage basins with more than 1,000 vehicle trips per day. In addition, these UICs are subject to an annual fee of $107 per UIC.

Fees for authorization by permit are:

- For an individual permit, $16,601 application fee and $3,514 annual fee.
- For a general permit, $745 application fee and $765 annual fee, plus $133 per low risk UIC, $167 per moderate risk UIC, and $401 per high risk UIC at application. High risk UICs are also subject to a $133 annual fee.

These fees are subject to change.
https://www.oregon.gov/deq/wq/wqpermits/Pages/UIC-faq.aspx

How do you identify a drywell?

Your first clue is that there is a catch basin located in a parking lot. A catch basin is typically a subterranean container topped with a grate that becomes the location for parking lot runoff water to collect to. It typically allows debris and sediment to settle out of the water runoff before the water travels elsewhere. Their purpose is to drain water off of parking lots. Proper drainage flow is crucial, because otherwise water will pool, freeze, and compromise the asphalt surface and the subbase below, and over time will destroy a parking lot.
https://maulasphalt.com/blog/catch-basins-drainage-systems-for-your-parking-lot/

Think of a catch basin like a nonactive sump pump for your parking lot. Typically catch basins are built with a concrete block, but they can also be made of brick or concrete rings. They can be drained into rocks (drywell), filters, sewage lines or storm sewers.

If they are drywells the runoff water is drained on site. If not, the water goes into streams, storm lines or sewer line. The only way to know is to run a camera down the catch basin, or use ground radar to find storm sewer lines.

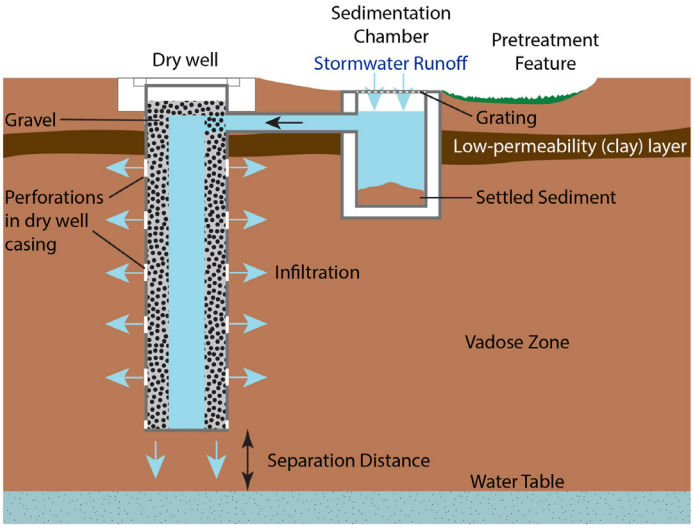
Catch basins that drain into storm sewers are typically not regulated and do not need to be registered. UIC regulations do not apply to swales, French drains, or footing drains.
https://extensionpublications.unl.edu/assets/pdf/ec701.pdf
https://www.oregon.gov/deq/wq/wqpermits/Pages/UIC.aspx

Pictures to Illustrate Are Below

https://oldcastleinfrastructure.com/product/catch-basins-inlets/

https://www.empire-pipe.com/storm-sewers/

https://www.filtrexx.com/en/products/stormexx



https://www.americangeosciences.org/geoscience-currents/dry-wells-stormwater-management

Exclusions from the UIC Rule

The following activities are not considered UICs under the Oregon DEQ UIC program:

- Single family residential septic and cesspool systems receiving only domestic waste with drain fields.
- Non-residential septic systems and cesspools with drain fields handling only human sanitary waste and designed to serve less than 20 people per day or with a design flow of less than 2,500 gallons per day (cumulative).
- Injection for the purpose of storing hydrocarbons that are gases at standard pressure and temperature.
- Any dug hole, blasted or drilled hole, excavated, or bored shaft not used to discharge to the subsurface.

https://www.oregon.gov/deq/wq/wqpermits/Pages/UIC.aspx

DEQ Authorization to Manage Drywell Systems

In case you are wondering where DEQ gets the rule making authority. The federal UIC program was enacted in 1974, under the Safe Drinking Water Act, and is administered under 40 Code of Federal Regulations part 144-146. The UIC program's goal is to protect freshwater aquifers from contamination due to underground injection systems. In 1984, EPA gave DEQ authority to regulate UIC systems on EPA's behalf and re-authorized the program in 1991. DEQ regulates the UIC Program under Oregon Administrative Rules Chapter 340, Division 44.

Summary

We have been given an additional responsibility as a real estate investor. As property owners, we need to make sure all parking lot drains are either attached to storm water systems or if they are drywells, we need to make sure they are not polluting, and we need to prove that parking lot drywells are registered with the Oregon DEQ. This increases the steps we need to take as we complete due diligence for properties we purchase as well. Environmental consultants will need to be hired to register the UIC systems and confirm that they are safe. This creates one more step a property owner needs to be aware of.

We recommend you plan ahead with your environmental engineer, so this does not trip you up. If you own an apartment building or a commercial building and plan to sell it in the future, now is the time to investigate where your parking lot drains to, and make sure that your drywells are registered with DEQ.

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