

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
For

401 Certification Fees – Clean Water Act

RULE CAPTION
401 WQ Certification Fee Increase

1. Explain the purpose of the proposed rules.

This rulemaking is intended to increase 401 certification fees to provide sufficient revenue to cover program costs and to provide additional staff to expedite review / approval and to enhance technical assistance and program implementation.

This rulemaking will also restructure the fees so that they are based on program costs rather than on the amount of removal and fill.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes X No

a. If yes, identify existing program/rule/activity:

The proposed rules affect Oregon's 401 Water Quality Certification Removal/Fill program (OAR 340-018-0030(5)(g) Certification of Water Quality Standards for Federal Permits, Licenses, that certifies that activities requiring federal licenses and permits must comply with water quality requirements and standards.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No (if no, explain):

DEQ will implement the proposed rules through its 401 Water Quality Certification program. An approved land use compatibility statement is required from local government before a 401 Certification is finalized.

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

Not applicable.

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures DEQ will use to ensure compliance and compatibility.**

Not applicable. The proposed rules have been determined a land use program under 2. above, and are subject to existing land use compliance and compatibility procedures.