

# 401 WQ CERTIFICATION FEE INCREASE

## DRAFT RULE

July 2012

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340-048-0055

### Fee Schedule for Certifications

[NEW LANGUAGE PROVIDED BELOW]

~~(1) Persons applying for a certification must pay the fees established in this rule. When fees are based on total volume or area, the fees will be based on the total volume or area specified in the application, not actual volume or area ultimately affected during the term of the certification.~~

~~(2) Fees for removal of materials from waters of the state are as follows:~~

~~(a) 500 to 9,999 cubic yards — \$950;~~

~~(b) 10,000 to 99,999 cubic yards — \$2,800;~~

~~(c) 100,000 to 999,999 cubic yards — \$4,700;~~

~~(d) 1,000,000 to 9,999,999 cubic yards — \$14,000; and~~

~~(e) 10,000,000 cubic yards or more — \$16,000 or the amount specified in section (7) of this rule, whichever is greater.~~

~~(3) The fees established in section (2) of this rule will be reduced by 25% in those cases where the Dredged Material Evaluation Framework (DMEF) exclusion criteria for sediment testing are met. [Reference: Dredged Material Evaluation Framework, Lower Columbia River Management Area, November 1998.]~~

~~(4) Fees for filling of waters of the state are as follows:~~

~~(a) 2 to 4.99 acres — \$950;~~

~~(b) 5 to 9.99 acres — \$2,800;~~

~~(c) 10 to 14.99 acres — \$4,700; and~~

~~(d) 15 acres or more — \$8,000 or the amount specified in section (7) of this rule, whichever is greater.~~

~~(5) Only one certification fee is required for a project that includes both removal of material under section (2) of this rule and filling of material under section (4) of this rule in the immediate area of the excavation. The higher of the two fees applies.~~

~~(6) The fee for application of salt in ski areas is \$5,000.~~

~~(7) For activities described in subsections (2)(e) and (4)(d) of this rule and activities not elsewhere classified in this rule, fees will be based on the estimated number of months of full-time staff equivalent (FTE) required to certify the activity multiplied by \$8,000 (number of months x \$8,000 = fee amount). The estimate of required FTE months will be made by the department. There is no fee for activities requiring less than 2 weeks of FTE.~~

~~(8) Fees for certification of a hydroelectric project must be paid in accordance with ORS 468.065(3).~~

~~(9) Fees for multi-year projects may be paid on a schedule approved by the department.~~

~~(10) All fees are payable to the Business Office, Oregon Department of Environmental Quality.~~

~~(11) A fee may be refunded if the department determines that no certification is required or that the wrong application has been filed.~~

~~(12) Fees are not charged for activities:~~

~~(a) Requiring an operating permit for surface mining under ORS chapter 517;~~

~~(b) Relating to commercial sand and gravel removal operations;~~

~~(c) Involving removal of less than 500 cubic yards of material; or~~

~~(d) Involving a fill of less than two acres.~~

## [PROPOSED RULE BELOW]

(1) **Applicability.** The fees established in this rule apply to any person, including a federal agency, submitting an application for certification to DEQ.

(2) **Fee Determinations.** To determine the appropriate fee to process and review an application for certification, DEQ will do the following:

(a) Perform an initial review of the application and other materials submitted;

- (b) Determine the estimated program costs incurred by DEQ in reviewing the proposed project based on the types of tasks expected, the amount of staff time and other expenses, and assign a tier using the criteria in Section (3);
  - (c) Submit an invoice or, if necessary, multiple invoices, to the applicant based on the appropriate fee schedule provided in Section (4); and
  - (d) As necessary, revise an assigned tier based on documentation of the expected types of tasks or program costs incurred, if appropriate, and notify the applicant of such revisions.
- (3) **Project Tiers.** The following tier schedule describes the types of tasks expected to appropriately process and review proposed projects for certification:
- (a) Tier 1- This tier applies to those projects that incur minimal program costs and impacts to water quality. To qualify under this tier, the project must meet the following:
    - (A) Potential for minimal impacts to water quality;
    - (B) Low level of public participation;
    - (C) No more than standard coordination with federal state or local agencies required;
    - (D) Stormwater management plan review not required or will be addressed through the National Pollutant Discharge Elimination System permitting process;
    - (E) Limited technical assistance needed; or,
    - (F) Within the scope of a United States Army Corps of Engineers Nationwide 404 category requiring a DEQ 401 certification and involving only a stormwater management plan or sediment evaluation review component;
    - (G) Within the scope of the proposed application, the project has been modified or altered that the DEQ 401 review and certification requires re-issuance, including DEQ public notice.
  - (b) Tier 2A -This tier applies to those projects that incur a higher than minimal amount of program costs and impacts to water quality. To qualify under this tier, the project must meet some of the following:
    - (A) Potential for greater than minimal impacts to water quality;
    - (B) Basic level of public participation required, including but not limited to response to comment;
    - (C) No more than standard coordination with federal state or local agencies required;
    - (D) Limited stormwater management plan review or technical assistance to a reviewing permitted entity or agent required;
    - (E) Limited technical assistance needed; or

- (F) Sediment characterization, if required, finds sediment and new surface suitable for in-water exposure.
- (c) Tier 2B - This tier applies to those projects that incur higher program costs due to greater potential impacts on water quality. To qualify for this tier, the project must meet a majority of the following:
- (A) Potential for greater water quality impacts if the waterway is identified on DEQ's 303(d) list or is covered by a total maximum daily load, or multiple waters of the state are affected;
  - (B) High level of public participation required with potential for one or more public meetings or hearings;
  - (C) More than standard coordination with multiple federal, state or local agencies required, including but not limited to one or more meetings or pre-application site visit;
  - (D) Complex stormwater management plan review and coordination required;
  - (E) Moderate and on-going level of technical assistance needed;
  - (F) Large or complex compensatory mitigation review required;
  - (G) Sediment characterization, if required, finds sediment or new surface unsuitable for in-water exposure, so that coordination with the DEQ Solid Waste or Environmental Cleanup programs is necessary; or
  - (H) Preparation of a full evaluation and findings report needed.
- (d) Tier 3 - This tier applies to those projects that incur very high program costs because a large area is affected, a high degree of complexity is involved or greater potential water quality impacts may result. To qualify for this tier, the project must meet a majority of the following:
- (A) Potential for greater water quality impacts if the waterway is identified on DEQ's 303(d) list or covered by a total maximum daily load, or multiple waters of the state are affected;
  - (B) High level of public participation required with extensive public comments and the potential for one or more public meetings or hearings;
  - (C) Substantially more than standard coordination with multiple federal, state or local agencies required, including but not limited to one or more meetings;
  - (D) Complex stormwater management plan review and coordination required;
  - (E) High level or iterative technical assistance required or substantive project revisions received;
  - (F) Large or complex compensatory mitigation review required;
  - (G) Site visit(s) needed to understand impacts and advise on potential alternatives;
  - (H) Sediment characterization finds sediment or new surface unsuitable for in-water exposure or contaminated soil is likely to be present, so that

coordination with the DEQ Solid Waste or Environmental Cleanup Programs is necessary; or

(I) Preparation of a full evaluation and findings report needed.

(e) Tier 4 - This tier applies to those projects that incur the highest program costs because a very large area is affected, an extremely high degree of complexity is involved, or a very high level of public participation is expected. To qualify for this tier, the project must meet all of the following:

(A) All of the applicable factors identified in Tier 3; and

(B) Coordination with the Governor's Office in conjunction with other state agencies, tribal nations and the federal government;

(C) Review of additional documents such as National Environmental Policy Act Resource Reports, Environmental Assessments and Environmental Impact Statements.

(4) **Fee Schedules.** The following fees apply to tiers assigned under Sections (2) and (3):

(a) As of January 1, 2013, the following fees apply:

(A) Tier 1 - \$985

(B) Tier 2A - \$4,390

(C) Tier 2B - \$12,105

(D) Tier 3 - \$17,780

(E) Tier 4 - \$14,020 per month or average monthly cost of a senior level technical staff position.

(b) In lieu of fees established by this section, DEQ may at its discretion enter into an intergovernmental agreement with another state or federal agency that provides for the payment of the estimated or actual costs of processing an application for certification.

(5) **Review of Fee Determinations.** An applicant may seek review of DEQ's determination of the appropriate fee as follows:

(a) An applicant may seek review of the fee determination by submitting a written request to the DEQ regional administrator within 30 days of receipt of an invoice. The request must state the specific reasons and provide documentation that the applicant believes supports a different fee amount. Upon receiving such a request, the DEQ regional administrator must respond within 60 days of receipt and render a decision.

(b) That decision may include:

(A) Determination that a different fee tier will apply subject to making specifically identified modifications to the proposed project;

(B) Denial of a request for a different fee amount; or;

(C) The determination that the proposed project meets the criteria for a different tier.

- (c) If an applicant is not satisfied by the decision of the DEQ regional administrator, the applicant is entitled to request review by the DEQ director in the same manner as described in subsections (a) and (b) above.
- (d) An applicant who is dissatisfied with the review of the director retains the right to a contested case hearing as provided in ORS chapter 183, provided the applicant has sought relief through subsections (a) through (c).

(6) **Certification of Hydroelectric Projects.** Fees for certification of a hydroelectric project as proposed to be licensed by the Federal Energy Regulatory Commission must be paid in accordance with ORS 468.065(3). Fees for a certification related to a hydroelectric project but for a license or approval not issued by the Federal Energy Regulatory Commission are based on the actual expenses incurred by the department, including expenses of the Environmental Quality Commission, related to the certification review and decision. In consultation with the applicant, DEQ will establish a periodic basis for billing the applicant.

(7) DEQ may approve a payment schedule for fees, including the submission of multiple invoices, for multi-year projects or projects assigned as a Tier 4.

(8) DEQ must receive the payment of the full invoiced fee before issuing a certification, and a review made pursuant to subsection (5) does not suspend the requirement to pay the appropriate fee. An application for certification is considered withdrawn if the applicant fails to pay the appropriate fee within 90 days of the invoice date. An applicant may request that DEQ grant an extension of time to pay the appropriate fee to an applicant upon a showing of good cause, and DEQ will continue processing the application for certification. DEQ may refund the fee or some portion if it determines that no certification is required, that minimal program costs were not incurred, a revised tier assignment is provided or the wrong application has been filed.