

State of Oregon
Department of Environmental Quality

Memorandum

Date: Aug. 1, 2012

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item B, Informational item: Proposed 401 Water Quality Certification fee increase, OAR Chapter 340, Division 48
Aug. 23-24, 2012, EQC meeting

Purpose of item This item will update the commission a proposed rule to increase fees for 401 water quality certifications. EQC will have an opportunity to hear public comment in a hearing before the commission scheduled to follow this item's presentation.

Background Under section 401 of the Clean Water Act, DEQ is required to certify that activities requiring federal licenses and permits comply with water quality standards. Most projects involve the removal of material from, or placement into, state waters. These are typically sand and gravel operations, wetland fills for development and navigation dredging. The size and complexity of projects vary, and DEQ receives about 100 individual certification applications annually.

DEQ is proposing a new fee schedule to certify such activities. These fees, as directed by the 2009 Oregon Legislature through House Bill 2185, will be based on projected program costs rather than on volume of material removed or filled. The fees will apply to activities that were previously exempt, such as sand and gravel operations, projects that fill two acres of wetlands or more or remove more than 500 cubic yards of material. The proposed changes would not apply to hydroelectric projects. The proposed fee increases, if approved, would take effect January 2013.

The fee increase is necessary to ensure sufficient revenue and staff to improve guidance documents and timeliness, provide more technical assistance to applicants and establish a field presence to evaluate program effectiveness. The new fees would add an additional 2.5 staff and help fully fund the existing two staff statewide.

DEQ formed an advisory committee that met in 2007, 2008, 2010 and 2012. Representatives from state, federal and local government, environmental groups and trade associations participated. The committee endorsed moving forward with the fee increase as long as the exemptions for sectors that do not currently pay fees were eliminated. The committee generally agreed that 401

certification fees should be based on the program costs for the review and approval of projects, instead of the current fees based on volume of material removed or added.

The proposed fee structure is based on recommendations from a multi-agency Kaizen process-improvement event, advisory committee input and the Legislature's direction. Recently DEQ has implemented some recommendations, discussed them with the advisory committee and briefed stakeholders.

Kaizen event

As part of an ongoing process to streamline the program, in 2011, DEQ led a Kaizen process improvement project with 10 state and federal agencies. DEQ and the participating entities committed to implementing the Kaizen recommendations for the Clean Water Section 404/401/removal-fill certifications and permit programs.

Kaizen project recommendations benefit all applicants and agencies involved in projects that require a water quality certification. A primary recommendation included establishing pre-application meetings with agencies and applicants. Pre-application activities help applicants prepare a complete application with fewer steps. The pre-application process is intended to result in reducing longer-term technical assistance and extensive multi-agency coordination. Pre-application meetings may provide information to applicants early enough in the design process to develop and adjust a project design to minimize potential impacts to water quality, which could result in lower fees and faster processing of applications.

Next steps

The public comment period will close Aug. 29, 2012. DEQ will evaluate the comments received and develop responses. DEQ plans to present the proposed rule for commission action at the October 2012 EQC meeting.

Available upon request

1. March 15, 2012, Memorandum to Advisory Committee
2. 404/401/removal-fill Kaizen project fact sheet
3. House Bill 2185 (enrolled version)
4. Notice documents available via website
<http://www.deq.state.or.us/wq/sec401cert/rulemaking.htm>

Approved:

Division: _____

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