

**Date:** October 8, 2010

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda item M, Informational item: 401 Water quality certification fee increase, OAR Chapter 340, Division 48  
October 20-22, 2010, EQC meeting

**Purpose of item** This item is intended to update the commission on the proposed rule to increase fees paid by applicants to the 401 water quality certification program.

**Background** Under section 401 of the Clean Water Act, DEQ certifies 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 such as sand and gravel operations, wetland fills for development and navigation dredging. The size and complexity of projects vary, ranging from road to environmental restoration projects. 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 initial proposed fee increases would take effect February 2011 and slightly higher fees in July 2012, as recommended by members of the advisory committee.

The fee increase is necessary to ensure sufficient revenue and staff to effectively implement the 401 certification program. Specifically, the proposed fee revenue would allow DEQ to increase program staff from two to 4.5 persons. Additional staff would enable the program to develop better guidance materials and provide more technical assistance to applicants.

DEQ formed an advisory committee in 2008, which met several times. Representatives from the federal government, state government, local

governments, environmental groups and trade associations all participated in this process. The committee generally agreed that 401 certification fees should be based on the program costs for the review and approval of projects.

In light of legislation passed in the 2009 session, DEQ held an additional meeting of this committee in March 2010 to present two options for a revised fee structure. The revised structure took into account several of the issues raised during 2008 committee discussions as well as the legislative direction.

After the March 2010 meeting, DEQ further revised the proposed rule so that lower fees would apply February 2011 through June 2012 and slightly higher fees would take effect July 2012.

<b>Next steps</b>	DEQ will evaluate the comments recently received during the public comment period and developing responses. DEQ expects to present the proposed rule for adoption at the December EQC meeting.
<b>Attachments</b>	A. Proposed rule revisions
<b>Available upon request</b>	1. March 24, 2010 Memorandum to Removal-Fill Advisory Committee 2. House Bill 2185 (enrolled version)

Approved:

Section: \_\_\_\_\_

Division: \_\_\_\_\_

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