

401 WQ CERTIFICATION FEE INCREASE

DRAFT RULE

JULY 2010

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 federal agencies, 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) Revise an assigned tier based on documentation of the expected types of tasks or program costs incurred, and, if appropriate, 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 for this tier, the project must meet a majority of the following:
 - (A) Potential for minimal impacts on water quality;
 - (B) Limited or no known public interest;
 - (C) Stormwater management plan review not required or addressed in NPDES permitting process;
 - (D) Limited technical assistance needed; or,
 - (E) USACE Nationwide 404 category with a stormwater management plan review component.
 - (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 for this tier, the project must meet a majority of the following:
 - (A) Potential for greater than minimal impacts to water quality;
 - (B) Some level of public interest;
 - (C) Limited stormwater management plan review or technical assistance to a reviewing NPDES permitted entity or agent required;
 - (D) Limited technical assistance needed; or
Sediment characterization determination, if required, is suitable for unconfined, in-water disposal.
 - (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 as impaired or multiple waterways are affected;

- (B) High level of public interest with potential for one or more public meetings or hearings;
 - (C) Complex stormwater management plan review required;
 - (D) High level of technical assistance needed;
 - (E) Substantial coordination with multiple federal, state or local agencies may be required;
 - (F) Large or complex compensatory mitigation component; or Sediment characterization determination, if required, is unsuitable for unconfined, in-water disposal and coordination with the DEQ Solid Waste program is necessary.
- (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 significant potential water quality impacts may result. To qualify for this tier, the project must meet a majority of the following:
- (A) Potential for significant water quality impacts as impaired or multiple waterways are affected;
 - (B) High level of public interest with potential for one or more public meetings or hearings;
 - (C) Complex stormwater management plan review required;
 - (D) Extensive technical assistance required or multiple project revisions expected;
 - (E) Substantial coordination with multiple federal, state or local agencies may be required;
 - (F) Site visits needed to understand impacts and advise on potential alternatives;
 - (G) Contaminated sediment or soil issues present or likely to be present; or Preparation of 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 interest is expected. To qualify for this tier, the project must meet all of the following:
- (A) All of the factors identified in Tier 3;
 - (B) Coordination with the Governor's Office in conjunction with other state agencies and the federal government;
 - (C) Multiple site visits needed to understand impacts and advise on potential alternatives; and
 - (D) 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) From February 1, 2011 through June 30, 2012, the following fees apply:

- (A) Tier 1 - \$970
- (B) Tier 2A - \$4450
- (C) Tier 2B - \$8980
- (D) Tier 3 - \$14,320
- (E) Tier 4 - \$15,000 per month (average monthly cost of a senior level technical staff position)

(b) As of July 1, 2012, the following fees apply to tiers assigned under Sections (3) and (4):

- (A) Tier 1 - \$995
- (B) Tier 2A - \$4755
- (C) Tier 2B - \$13,345
- (D) Tier 3 - \$18,020
- (E) Tier 4 - \$15,000 per month (average monthly cost of a senior level technical staff position).

(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. Such a request does not stay the requirement to pay the fee. 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 within 60 days of receipt render a decision.
- (b) That decision may include:
 - (A) Identification of modifications or changes to the project that will change the fee;
 - (B) Denial of a request for a different fee amount; or;
 - (C) The determination of an alternative fee amount.
- (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 subsection (a) 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 a fee before issuing a certification. An application for certification is considered withdrawn if the applicant fails to pay the appropriate fee within 90 days after the project associated with the application is assigned a tier or a revised tier. Fees are payable to the Oregon Department of Environmental Quality Accounting Section.

(9) DEQ may refund the fee or some portion if it determines that no certification is required or that the wrong application has been filed.