

Proposed Rulemaking Announcement

401 Certification Fees: Clean Water Act

Rule Caption

401 WQ Certification Fee Increase

Background

The Oregon Department of Environmental Quality proposes to increase fees for certifying that activities requiring federal licenses and permits comply with water quality requirements and standards. DEQ certifies compliance as authorized by Section 401 of the federal Clean Water Act. The proposed fees apply to most projects that remove material from, or place fill into, navigable state waters (such as sand and gravel operations or dredging for navigation channels). The fees would not apply to hydroelectric projects.

DEQ has statutory authority to address this issue under Oregon Revised Statute 468. This rule implements ORS 468B.047.

Why are rule changes needed?

This rulemaking would increase 401 certification fees so that DEQ has sufficient revenue to cover program costs and provide additional staff to expedite certification review/approval and to enhance technical assistance/program implementation.

What is the objective of this rulemaking?

Based on legislative direction, DEQ is proposing to charge 401 certification fees for previously exempt activities. Also, current 401 certification fees will be increased to support additional staff. Fees will be based on program costs, rather than on material amounts removed and filled, as they currently are structured.

Who may be affected?

The proposed changes will apply to most projects that require federal permits or licenses for removal, fill or other activities (except hydroelectric projects) that may result in discharges to navigable waters of Oregon. This includes individuals, small and large businesses such as mining operations, local governments, state and federal agencies and other entities.

How was this proposal developed?

DEQ convened an advisory committee with representatives from the various types of 401 certification fee payers to help develop the proposed rule changes.

Document review

Copies of documents used to develop this rulemaking proposal can be reviewed at DEQ's

main office at 811 S.W. 6th Ave., Portland, Oregon. Please contact Palmer Mason for times when documents are available for review.

The following materials are also available for review via DEQ's website at:

<http://www.deq.state.or.us/wq/sec401cert/rulemaking.htm>:

- A: Proposed Rule Changes
- B: Statement of Need and Fiscal Impact
- C: Land Use Evaluation Statement
- D: Relationship to Federal Requirements

How to comment

Comments on the proposed rulemaking may be submitted in writing via mail, fax or e-mail at any time prior to the comment deadline of 5 p.m. Friday, Sept. 10, 2010. Written and oral comments can be submitted during any of the public hearings specified below. It is not necessary to attend a hearing in order comment. Written comments received prior to the deadline are treated equally with oral comments.

Written comments may be mailed to Palmer Mason, Oregon DEQ, 811 SW Sixth Ave., Portland, OR 97204-1390, (503) 229-6800, or toll-free in Oregon at 1-800-452-4011, x6800.

Comments may be faxed to Palmer Mason at (503) 229-6977, or e-mailed to:

mason.palmer@deq.state.or.us

Public hearings

DEQ will hold public hearings in The Dalles, Roseburg, and Portland. Each hearing will begin with a brief overview of the proposed rule changes, followed by opportunity for people to provide oral and written comment. DEQ will record and review all comments.

- **The Dalles, 6 p.m., Monday, Aug. 30,**
Columbia Gorge Community College, 400 East Scenic Drive, Building 3, Classroom 3.203
- **Roseburg, 6 p.m., Wednesday, Sept. 1,**
Roseburg Central Library, 1409 NE Diamond Lake Boulevard, Ford Community Room
- **Portland, 6 p.m., Wednesday, Sept. 8,**
DEQ Headquarters Office, 811 SW Sixth Ave. (SW Sixth and Yamhill), 10th floor, Conference Room EQC-A



State of Oregon
Department of
Environmental
Quality

**Water Quality
Division
Program Policy and
Project Assistance**
811 SW 6th Ave.
Portland, OR 97204
(503) 229-5876
(800) 452-4011, x5876
Fax: (503) 229-6037
www.deq.state.or.us

Contact: Palmer Mason
(503) 229-6800
mason.palmer@deq.state.or.us

Last updated: 7/27/10
By: Palmer Mason

Comment deadline is Friday, Sept. 10

All comments are due to DEQ by 5 p.m. on Friday, Sept. 10. DEQ cannot consider comments from any party **received** after the deadline for public comment.

How will rules be adopted?

DEQ will prepare a response to all comments received during the public hearing and comment period and may modify the proposed rules. DEQ plans to recommend that the Oregon Environmental Quality Commission adopt the rules at the commission's December 2010 meeting. DEQ will notify persons of the time and place for final commission action if they submit comments during the hearing or comment period or request to be placed on DEQ's mailing list for this rulemaking.

Alternative formats/accommodations

Please notify DEQ of any special physical or language accommodations needed for the hearings as far in advance as possible.

Alternative formats (Braille, large type) of this document can be made available by contacting DEQ's Office of Communications & Outreach, Portland, at (503) 229-5696, or by calling toll-free in Oregon at 1-800-452-4011, ext. 5696.