



Oregon

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Oregon Department of Environmental Quality
Testimony before the House Committee on Environment and Water

House Bill 2185
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Good afternoon Chair Cannon and members of the committee. For the record, my name is Nina DeConcini and I'm the Northwest Region Administrator for the Oregon Department of Environmental Quality. My region oversees the 401 water quality certification program throughout the state of Oregon. With me is Christine Svetkovich who is our Water Quality Legislative Coordinator.

I'm here today to provide an overview of HB 2185 which DEQ is proposing regarding our 401 certification program. Before I discuss the specifics of our bill, I'd like to provide a brief overview of what the 401 program is and why the work is important in protecting Oregon's waterways and assisting applicants achieve their economic development objectives.

Under Section 401 of the federal Clean Water Act, any federal license or permit to conduct an activity that may cause a discharge to waters of the United States must receive a water quality certification. In Oregon, DEQ is responsible for assuring that these projects are consistent with the water quality standards adopted by the Environmental Quality Commission and approved by the Environmental Protection Agency. The program we are here to discuss is the one that regulates "in-water" projects, also known as removal-fill projects, not the part of the programs that works on hydroelectric or dam relicensing.

DEQ issues over 100 individual 401 certifications annually for federal actions such as dredging, filling of wetlands for development, decommissioning of dams, transportation projects and stream and wetland restoration projects. Typically, these project proposals come to us through the US Army Corps of Engineers permit process. DEQ works closely with the US Army Corps of Engineers, the Department of State Lands, the Department of Fish and Wildlife and the Department of Land Conservation and Development throughout the permitting process to ensure applicants and the other agencies know what DEQ's expectations and requirements of proposed projects are related to water quality standards.

Size and complexity of these projects vary widely from small wetland fills for private driveways to many acres of fill or disturbance for development projects, including flood mitigation. Although DEQ is primarily concerned with the protection of water quality as we issue certifications, we work diligently with all applicants to achieve both the project and environmental goals.

During the 2007-09 legislative session, DEQ was given permission by the Legislature to increase 401 certification fees by thirty-five percent. We began meeting with a stakeholder advisory committee to discuss the implementation of the fee increase in late 2007. The group did not support proceeding with the existing fee increase because there are exemptions for certain applicants and categories of projects. Fifty-two percent of projects currently pay no fee and the fees are assessed based on the removal or fill amounts, not the workload associated with the project. In addition, the 2007 approved fee increase would have fully-funded the two staff currently in the program and added two part-time positions.

The advisory committee recommended DEQ develop an equitable fee structure based on the amount of work associated with each proposed project to ensure that the program has adequate staff to do the necessary work in a timely way. The exempt categories include: gravel mining, projects that remove less than 500 cubic yards of

material, projects that fill less than 2 acres of wetlands or projects that already have to pay a permit fee to DOGAMI for surface mining.

Based on that feedback, DEQ decided the 401 Program would forgo the proposed fee increase during the 2007-09 biennium and focus on developing a new fee schedule and associated policy package to achieve a sustainably funded 401 water quality certification program, with advisory committee input. DEQ updated the Legislature through the June 2008 Emergency Board meeting about the change in direction of the 401 Certification Program's fee increase for 2007-09 and the plans for 2009-11.

DEQ's existing staff level is inadequate to run a statewide 401 program. Despite the economic downturn, we have not seen a drop in 401 applications like we have in other programs at DEQ such as the onsite septic system, asbestos and heating oil tanks programs. The size of the projects proposed does not necessarily determine the complexity or the actual workload associated with evaluating whether we can issue a certification. Additionally, applicants vary in experience and those who are not familiar with the application process often require significantly more time and assistance than those applicants who have a better understanding of the process.

With input from our stakeholder advisory committee, DEQ developed a proposal to remove existing statutory exemptions regarding types of removal-fill projects requiring a 401 certification that must pay a fee. The removal of the exemptions is at the top of Section 1 in the bill. If HB 2185 is approved, this means that all individual 401 certification applicants will pay a fee. The bill also includes a new proposed fee structure for the 401 program. The new fees are in Section 1 in (a) - (f) of the bill. The fee structure is not based on the amount of removal or fill material. DEQ would assess a base fee for all applicants plus an additional fee for individual certifications based on workload associated with the scale and complexity of the proposed projects. Section 1 (2) of the bill outlines how DEQ will decide which tier each application will fall into and when the fees are due. Section 1 (3) of the bill allows the Environmental Quality Commission to change the fee schedule after January 1, 2012.

This new fee structure is intended to do three things:

- (1) fully fund existing staff;
- (2) restore two positions approved by the 2007 Legislature; and,
- (3) add two new positions.

One of the new positions will be based in DEQ's Western Region, where approximately 55 percent of projects are located; the other will make another existing half-time position whole. The proposed fees will also fund much-needed database and Web site work and guidance document development for applicants. Policy package # 127 in the Governor's Recommended Budget is associated with this bill.

The advisory committee stressed the importance of providing more certainty to applicants in terms of both anticipated time frames as well as fee amounts based on the type of projects proposed.

Approval of this package will benefit Oregonians and the environment by ensuring that DEQ will be able to:

- Complete timely reviews of all project proposals.
- Increase applicant knowledge of the 401 certification process through guidance on the DEQ Web site.
- Increase efficiency and improve customer service by locating a staff person in the Western region where many projects occur.
- Increase participation in pre-application meetings.
- Participate in state and federal streamlining efforts with other agencies.
- Begin compliance monitoring and enforcement activities to ensure all applicants are treated equally.
- Address and respond to the anticipated projects that will be funded by the federal economic stimulus funding that will require a 401 certification.

In conclusion, we are hopeful that the passage of this bill and approval of the policy package will provide the program with the resources needed to provide applicants with the technical assistance they deserve and scientific decisions we need to ensure water quality is protected. I am happy to answer any questions you may have.