

## DEQ Budget Proposal: Water Quality 401 Project Certification



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Department of  
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Quality

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### What is the 401 Program?

Under Section 401 of the Clean Water Act, any federal license or permit to conduct an activity that may result in a discharge to waters of the United States must receive a water quality certification. In Oregon, DEQ is responsible for certifying that projects will be conducted consistent with water quality standards.

DEQ issues approximately 150 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. 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. Some examples include in-water projects such as Columbia River channel deepening and Liquefied Natural Gas terminals and pipelines, as well as programmatic certifications covering multiple activities like stream restoration and road construction.

### How is the 401 program currently funded?

Currently, this statewide program consists of two full time technical staff. One is funded by general funds and the other is intended to be funded fully by fees. The current fee structure was adopted by the Environmental Quality Commission in 2004. Fees are charged in increasing values based on proposed fill or removal amounts. No fees are charged for projects that propose to fill less than 2 acres of wetlands or remove less than 500 cubic yards of material. Approximately 66% of the projects receiving a 401 certification do not pay a fee. Fees currently generate only enough revenue to fund 70% of the 1.0 FTE intended to be fee funded.

### What are the workload demands?

While the number and type of dredge and fill projects has remained similar over time, the work associated with the 401 program has increased. This is due to additional listings under the federal Endangered Species Act, greater complexity of water quality regulations, and requirements from other DEQ programs (e.g. the Total Maximum Daily Load program). Requests for technical assistance, pre-application meetings, and site visits have also increased

DEQ has not been able to develop key program implementation guidance such as best management practices, monitoring, and incorporating stormwater or TMDL requirements into projects to ensure water quality standards are achieved. In addition, DEQ has not been able to conduct any compliance monitoring on projects to evaluate implementation and effectiveness of 401 conditions, nor conduct adequate enforcement activities in response to complaints.

### What is the budget proposal?

DEQ proposes to change the fee structure to raise revenue to pay for 0.3 existing FTE which current fees do not fully fund and add 1.0 FTE to provide administrative and technical support to the program. The proposed fee changes would increase revenues by approximately \$228,000.

### What are the expected results?

Approval of the fee increase will allow us to better protect water quality in the state and provide increased assistance to guide applicants through the 401 certification process through:

- Timely review of all project proposals
- Increased participation in pre-application meetings
- Development of guidance documents
- Participation in the state streamlining efforts
- Coordination and integration of other DEQ program requirements when appropriate

### What will happen if the revenue increase is not approved?

If this proposal is not approved, DEQ will no longer be able to review and provide 401 certifications for most projects that dredge less than 500 cubic yards of material or fill less than 2 acres, approximately 50 % of projects per year. The regulated community will have uncertainty about project impacts to water quality and may be subject to litigation. Additionally, DEQ will not be able to develop guidance, attend pre-application meetings or offer other technical assistance to help applicants design their projects to meet 401 requirements.

### Alternative formats

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