
1. **DESCRIPTION:** The Department proposes to modify the requirements of this chapter to establish a $100 application fee for certifications required to be issued by the State pursuant to Section 401 of the Clean Water Act. The Department proposes to update its rules concerning the date of incorporation by reference of certain federal regulations. The change updates the publication of the federal rules from July 1, 2009, to July 1, 2010. The Department proposes to update a citation to another chapter of rules.

2. **CLASSES OF PERSONS AFFECTED:** Classes of persons affected are those who seek a water quality certification from the Water Quality Division of the DEQ.

3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** Classes of persons who will bear the costs are those who seek a water quality certification from the Water Quality Division of the DEQ.

4. **INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The DEQ has received no information on cost impacts from private or public entities.

5. **CLASSES OF PERSONS BENEFITTED:** All citizens of Oklahoma, including those who seek certain types of discharge permits or authorizations, or who have already obtained a discharge permit or authorization from the Water Quality Division of the DEQ will be benefitted because this rule allows DEQ to generate sufficient resources to properly regulate discharging systems. According to state statute, Title 82 of the Oklahoma Statutes, Section 1085.30, when there is compliance with the requirements of the Oklahoma Water Resources Board and the rules and requirements of the DEQ and other state agencies, a discharge is statutorily presumed to not be pollution.

6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** The economic impact on affected classes will be minimal.

7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The proposed revision will have a minimal additional economic impact on political subdivisions.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** None is expected.

9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** A one hundred dollar ($100.00) non-refundable application fee will be required of all 401 water quality certifications. The proposed application fee will be used to offset a portion of the costs for the water quality certification program due to decreases in state appropriations and increases due to rising costs of benefits, including mandatory increases in health insurance and retirement contributions.

10. **PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** Implementing the proposed rules will help DEQ to continue running the water quality certification program and maintain compliance with its agreement with EPA to properly enforce the federal program.

11. **PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** None.

12. **SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Federal grants and state appropriations will continue to be used along with the proposed application fees.

13. **PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The proposed revisions will have no anticipated effect on revenues for other agencies. The application fees will be used to offset loss of state appropriations and increase in cost of benefits; see paragraph 9 for further explanation.

14. **COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** None.

15. **EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** DEQ has conducted a division-wide budgetary and workload analysis in 2010. The analysis projected increases in cost due to rising costs of benefits including mandatory increases in health insurance and retirement contributions. The analysis showed that federal grants have remained constant and that state appropriations have declined. This analysis showed that DEQ could no longer offer this service without a fee.

16. **DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** There are no less costly or nonregulatory methods of achieving the purpose of the proposed revision to the rule.

17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed amendments will protect public health, safety, and environment by updating the federal rules incorporated by reference; and the fee increase will
help DEQ to continue administering the water quality certification program and maintain its compliance with its agreement with EPA to properly enforce the federal program.

18. **IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** See Item 17.

19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** See Item 17.

20. **PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** The update of the incorporation by reference for the federal rules will continue consistency with those rules. DEQ will continue to assist business entities to use and understand the DEQ’s permitting and enforcement requirements for discharging facilities.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** September 14, 2010.