Removal-Fill and Wetland Delineation Fees: Data Analysis and Methodology

OREGON DEPARTMENT OF STATE LANDS

Oregon's Removal-Fill Law helps protect wetlands and waters by requiring permits to remove or add materials in wetlands, rivers, streams, lakes, and other waters of the state. For example, building bridges or boat ramps, installing culverts, or filling wetlands to develop property are common types of projects that require a removal-fill permit. When wetlands or waters are present, a delineation report is required to identify the boundaries of the protected resource.

The Common School Fund heavily subsidizes Oregon's removal-fill permitting process. The current fees paid by developers, property owners, and other permit applicants cover just 21%. On average, it costs $2.8 million every year to cover the remaining removal-fill permitting costs. In 2023, the Oregon Legislature approved moving removal-fill fees from statute into rule, allowing the Common School Fund subsidy to be addressed with a new fee structure for the permits we process.

Learn more about DSL rulemaking at: www.oregon.gov/dsl/Pages/rulemaking.aspx

Rulemaking Goals

Through this rulemaking the Department of State Lands is evaluating multiple potential cost recovery models for the removal-fill permitting process administered by the Department's regulatory program, including identifying wetlands and waters that may require a permit through wetland determination and delineations.

The goals of the rulemaking were informed by either legislative direction from House Bill 2238 (2023) or State Land Board direction, and include:

- Move fees from statute into rule, across four rule divisions: Division 85, 89, 90 and 93.
- Reduce or eliminate the subsidy of the program by the Common School Fund.
- Consider the administrative costs and the impacts on the waters of this state associated with different types of projects and adjust the fees into tiers, except for general authorizations which must be based on the cost of processing the general authorization.
- Evaluate the impact of fully recovering, through fees, DSL's costs to administer the removal-fill program.

The Data

Below are the qualitative and quantitative data sets that DSL staff used in developing the tiered fee structures and/or in identifying the fee that best aligned with administrative costs within each tier.

Fiscal Data

- Five years of expenditure and revenue data (2019-2023) for the removal-fill permitting program and wetland jurisdictional program.
  - Expenditures include, but are not limited to: program staff costs (salaries and benefits), DOJ attorney costs, in-state and out-of-state travel, and employee training.

- Revenues include fees collected for permit applications and wetland delineation report submissions.

Staff salary costs

- Identified staff positions that are involved with the types of permits and wetland delineation reports/jurisdictional determinations.
- Calculated the average hourly rate for each position, which includes base salary plus other personnel expenses (OPE).

Staff Time Tracking

From 2021 – 2023 staff self-tracked how their time was spent administering two pieces of the regulatory program:

- *Removal-fill (applications, modifications, renewals) - 361 tracked*
  - Date/time started/completed
  - Amount of time in hours to complete DSL application/authorization process
  - Type of permit, request for modification, renewals
  - Primary project type
  - Mitigation type
  - Aspects that added notable additional time
- *Wetland determination and delineation reports - 342 tracked*
  - Date/time started/completed
  - Amount of time in hours to complete DSL review
  - Whether there was a a site visit
  - Size of study area
  - Size of wetland area
  - Aspects that added notable time

Applications and Reports

Looking at our customer database, we pulled quantitative data on factors like wetland acres present, enforcement information, mitigation projects, and activity type from the applications and reports we received between January 1, 2019 - December 31, 2023 for:

- Removal-Fill Application (Individual Permits, General Permits, General Authorizations, and Emergency Authorizations)
- Wetland Determination and Delineation Reports

The Methodology

Creating the Fee Structures

Department staff identified the aspects which contribute to overall report or application complexity and increased reviewing and processing time for removal-fill permits, authorizations, wetland determinations, and wetland delineation reports.

That analysis resulted in development of three separate fee structures for the program:

1. Flat Removal-Fill Fees: General Authorizations and No State Permit for Voluntary Habitat Restoration Notices
2. Tiered Removal-Fill Fees: Individual Permits, General Permits and Emergency Authorizations
3. Tiered Wetland Delineation/Determination Fees

Developing the Cost Recovery Models

Using fiscal data, staff salary data, staff time data, removal-fill application data, and wetland determination and delineation report data, Department staff developed 50%, 70%, 85%, and full cost recovery models for presentation to the RAC. The overall methodology included:

- Calculation of average cost for processing each type of application. Staff salary costs were multiplied by the average time per permit or wetland delineation review. The resulting amount was used as the basis for determining fees for each type.
- Calculation of average total annual cost for administering the regulatory program. Expenditure data was used to identify the total average annual cost of administering the programs, and the overall target for full cost recovery.

The cost recovery models are based on the total estimated revenues necessary to cover costs for Individual and General Permits, including Emergency Permits, General Authorizations, and Wetland Determinations and Delineation Reports. A five-year program revenue and expenditure table was prepared by the Department's fiscal staff, and the estimated revenues replaced the actual revenues in the table. A five-year average of the estimated revenues was divided by the five-year average of the program's actual expenditures.

Additional details about the methodology for each type of authorization, permit, and report is below.

General Authorizations (GA)

- Cost processing a General Authorization
    - Using the staff tracking data, the average time of reviewing a GA notice was calculated.
    - Using the five-years of GA notice data, the average number of GAs was calculated.
    - The average hourly cost of each staff position associated with processing a GA was multiplied by the average number of GAs.
    - A flat fee for all GAs was based on the average staff costs for processing each GA and the total program cost recovery percentages, beginning at 50%.

Removal-Fill Fees: Individual Permits, General Permits, Emergency Permits

- Creating the tiered fee structure:
    - Staff identified aspects of permit reviews that contribute to the time spent on a permit and the complexity of permit review.
    - Staff considered impacts on the waters of this state associated with different project parameters.
    - Common criteria of project complexity and impacts on waters of this state were grouped together, resulting in a base application fee and five tiers.

- Determining fees:
  - Using the staff tracking data and the tiered fee structure, the staff reported applications were separated into tier levels and the average time per tier was determined.
  - Using the five-years of application data, the average number of applications per tier were identified.
  - The average hourly cost of each staff position associated with each tier was calculated to determine the staff salary cost per application, which provided a base staff cost recovery for each tier.
  - Determined approximate fees based on the results of hourly staff costs, the complexity of each tier, and the total program cost recovery percentages, beginning at 50%.

Wetland Determination and Delineation Fees

- Creating the Wetland Delineation Report tiered fee structure:
  - Staff identified aspects of report reviews that contribute to the time spent completing a review.
- Determining the Wetland Delineation Report fees
  - Using the staff tracking data, wetland delineation report data, and the tiered fee structure, the staff reported delineation reviews were separated into tier levels and the average time per tier was calculated.
  - The percentage of total staff reported delineation reports was calculated for each tier and that ratio was applied to the average number of delineation reports received to determine the average number of reports per tier.
  - The average hourly cost of each staff position associated with each tier was calculated to determine the staff salary cost per report review, which provided a base staff cost recovery for each tier.
  - Determined approximate fees based on the results of hourly staff costs, the complexity of each tier, and the total program cost recovery percentages, beginning at 50%.
- Determining On-Site Determination Fee
  - Using wetland determination data, the average number of on-site visits was calculated.
  - The basis of the fee was calculated using the staff cost for a 3-hour site visit, plus the mileage paid for 100 miles roundtrip.
  - Determined approximate fees based on the results of a base fee for an on-site visit, and the total program cost recovery percentages, beginning at 50%.

Learn More

To access materials provided at the Department's Rulemaking Advisory Committee (RAC) meetings, including the proposed tiered fee structures, fees, and rule language, please visit the Department's Rulemaking webpage at https://www.oregon.gov/dsl/Pages/rulemaking.aspx.

If you have any questions, please contact the Department's Rulemaking Coordinator, Danielle Boudreaux, at dsl.rules@dls.oregon.gov.