



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Northwest Region

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DATE

APPLICANT NAME

COMPANY/ORG NAME

STREET ADDRESS

CITY, STATE ZIP

RE: 401 Water Quality Certification Approval for Project Number, Project Name

The US Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #XX. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the expedited 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard individual certification. A standard individual certification will require additional information, a public notice, and a higher review fee.

**Certification Decision:** Based on information provided by the USACE and the Applicant, DEQ has determined that implementation eligible activities under the proposed NWP will be consistent with water quality requirements including applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

**Duration of Certificate:** This 401 WQC for impacts to waters, including dredge and fill activities, is valid for the duration of the USACE Section 404 permit. A new 401 WQC must be requested with any modification of the USACE 404 permit.

**In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the Nationwide 401 WQC.**

#### 401 GENERAL CERTIFICATION CONDITIONS

- 1) Responsible parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this WQC.  
*Rule: 40 CFR 121, OAR 340-048-0015*  
*Justification: DEQ must be aware of responsible parties to ensure compliance.*
- 2) Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Permit Application and additional application materials (hereafter "the permit application materials"), unless otherwise authorized by DEQ. If the project is operated in a manner not

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consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.

**Rule:** OAR 340-048-0015

**Justification:** To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.

- 3) **401 WQC on Site:** A copy of this 401 WQC must be kept on the job site and readily available for reference by the Applicant and its contractors and subcontractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other state and local government inspectors.  
**Rule:** OAR 340-012  
**Justification:** All parties must be aware of and comply with the 401 WQC, including on-site contractors.
- 4) **Project Changes:** DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification.  
**Rule:** OAR 340-048-0050  
**Justification:** To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.
- 5) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan. Such findings can be submitted using Section 11 of the Joint Permit Application, signed by the appropriate local official and indicating:
  - a. "This project is consistent with the comprehensive plan and land use regulations;" or,
  - b. "This project will be consistent with the comprehensive plan and land use regulations when the following local approvals are obtained," accompanied by the obtained local approvals.
  - c. Rarely, such as for federal projects on federal land, "this project is not regulated by the comprehensive plan" will be acceptable.

In lieu of submitting the appropriate section of the USACE & Department of State Lands (DSL) Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at: <http://www.oregon.gov/deq/FilterDocs/lucs.pdf>

**Rule:** OAR 340-048-0020(2) (i), OAR 340-018

**Justification:** DEQ must ensure compliance with water quality land use laws at the local level.

- 6) **Access:** The Applicant and its contractors must allow DEQ access to the project site with or without prior notice, including staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:
  - a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
  - b. To inspect best management practices (BMPs), monitoring or equipment or methods; and
  - c. To collect samples or monitor any discharge of pollutants.

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*Rule: OAR 340-012*

*Justification: DEQ must inspect facilities for compliance with all state rules and laws.*

- 7) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

*Rule: OAR 340-012*

*Justification: If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.*

### **FOR PROJECTS THAT PROPOSE CONSTRUCTION, THE FOLLOWING GENERAL CONDITIONS APPLY**

- 8) **Erosion and Sediment Control:** During construction, erosion control measures must be implemented to prevent or control movement of soil into waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. A project that disturbs more than one acre may be required to obtain a National Pollutant Discharge Elimination System (NPDES) 1200-C construction stormwater general permit. Contact the DEQ Stormwater Program for more information at: <https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>

In addition, the Applicant must:

- a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.
- b. Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours.
- c. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized;
  - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.
  - ii. If sediment has reached 1/3 of the exposed height of a sediment or erosion control, Applicant must remove the sediment to its original contour.
- d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.
- e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.
- f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.

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- g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.

**Rule:** OAR 340-041-0007(8), ORS 468B.050, CWA Section 402, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 9) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands (wetlands are waters of the state). This includes, but is not limited to: petroleum products; chemicals; cement cured less than 24 hours; welding slag and grindings; concrete saw cutting by-products; sandblasted materials; chipped paint; tires; wire; steel posts; asphalt; and waste concrete.

The following specific requirements apply:

- a. Cure concrete, cement, or grout for at least 24 hours before any contact with flowing waters;
- b. Use only clean fill, free of waste and polluted substances;
- c. Employ all practicable controls to prevent discharges of spills of harmful materials to surface or groundwater;
- d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;
- e. Remove all foreign materials, refuse, and waste from the project area

**Rule:** OAR 340-041-0007(8), ORS 468B.050, CWA Section 402

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 10) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat directly or result in potential discharges.

**Rule:** ORS 468B.025(1)(a)

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 11) **Spill & Incident Reporting:**

- a. In the event that deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311) within 24 hours. Containment and cleanup must begin immediately and be completed as soon as possible.
- b. If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS, and US Fish and Wildlife Service (USFW).

**Rule:** ORS 466.645(1); OAR 340-142-0030(1)(b)(B), OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

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12) **Vegetation Protection and Site Restoration:**

- a. The Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:
  - i. Minimization of project and impact footprint;
  - ii. Designation of staging areas and access points in open, upland areas;
  - iii. Fencing and other barriers demarking construction areas; and
  - iv. Use of alternative equipment (e.g., spider hoe or crane).
- b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance.
- c. Pesticides (including herbicides) and fertilizers must be applied per manufacturer's instructions by a professionally licensed applicator. If chemical treatment is necessary, the Applicant is responsible for ensuring that pesticide application laws, including with the NPDES System 2300-A general permit, are met. Please review the information on the following website for more information:  
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>
  - i. For pesticide application within stormwater treatment facilities or within 150 feet of waters of the state, the Applicant must adopt an Integrated Pest Management (IPM) plan that describes pest prevention, monitoring and control techniques with a focus on prevention of inputs to waters of the state, or coverage under an NPDES permit, if required.
  - ii. Pesticide application should be applied during the dry season and avoid direct water application;
  - iii. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-041-0033

**Justification:** Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 13) **Buffers:** The Applicant shall avoid and protect from harm, all wetlands and provide a 50 foot buffer to waters of the state, unless proposed, necessary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will take the place of this certification requirement.

**Rule:** OAR 340-041, OAR 340-012

**Justification:** Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 14) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The Applicant must notify the Environmental Cleanup Section of DEQ at 1-800-452-4011.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-122, OAR 340-040

**Justification:** DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.

## FOR PROJECTS THAT PROPOSE IN-STREAM WORK IN JURISDICTIONAL WATERS

- 15) **Fish protection/ Oregon Department of Fish and Wildlife timing:** The Applicant must perform in-water work only within the ODFW preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*, or as authorized otherwise under a USACE permit and/or DSL removal/fill permit. Exceptions to the timing window must be recommended by ODFW, NMFS and/or the USFW as appropriate, and approved by DSL when applicable.  
*Rule:* OAR 340-041-0011  
*Justification:* DEQ must be protective of all water quality standards, including beneficial uses such as fish.
- 16) **Aquatic life movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity, unless otherwise approved in the approved application.  
*Rule:* OAR 340-041-0016; OAR 340-041-0028  
*Justification:* DEQ must be protective of all water quality standards, including beneficial uses such as fish.
- 17) **Isolation of in-water work areas:** The Applicant must isolate in-water work areas from the active flowing stream, unless otherwise authorized as part of the approved application, or authorized by DEQ.  
*Rule:* OAR 340-041, OAR 340-012, OAR 340-045  
*Justification:* DEQ must ensure that pollution does not enter waterways.
- 18) **Cessation of Work:** The Applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.  
*Rule:* OAR 340-041, OAR 340-012  
*Justification:* DEQ must ensure that pollution does not enter waterways.
- 19) **Turbidity:** The Applicant must implement BMPs to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except as specifically provided below:
- a. **Monitoring:** Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ.**
    - i. **Representative Background Point:** The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet up-current of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring down-current at the compliance point described below.
    - ii. **Compliance Point:** The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet down-current from the disturbance at approximately mid-depth of the waterbody

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and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

- b. **Compliance:** The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances are allowed as followed:

<b>MONITORING WITH A TURBIDIMETER EVERY 2 HOURS</b>	
<b>TURBIDITY LEVEL</b>	<b>Restrictions to Duration of Activity</b>
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

c. **Reporting:**

- i. Record all turbidity monitoring required by subsections (a) and (b) above in daily logs which must include: calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; and location; date; time; and tidal stage (if applicable) for each reading.
- ii. A narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW upon request.
- iii. Keep records on file for the duration of the permit cycle.

d. **BMPs to Minimize In-stream Turbidity:** The Applicant must implement the following BMPs, unless accepted in writing by DEQ:

- i. Sequence/Phasing of work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances.
- ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or using a closed-lipped environmental bucket must be implemented;

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- iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary at the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
- iv. Machinery may not be driven into the flowing channel, unless authorized in writing by DEQ; and
- v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.
- vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

**Rule:** OAR 340-041-0036, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

#### **SPECIFIC CONDITIONS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT**

- 20) **Post Construction Stormwater Management:** For projects which propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post-construction stormwater management plan to DEQ. The plan must be reviewed and approved prior to construction to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including operation and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ in writing.

In lieu of a complete stormwater management plan, the Applicant may submit documentation of acceptance of the stormwater into a DEQ permitted NPDES Phase I Municipal Separate Storm Sewer System (MS4).

**Rule:** ORS 468B.050, OAR 340-045, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 21) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the applicant or the entity listed in the approved post-construction stormwater management plan.

Maintenance of stormwater treatment facilities subject to an MS4 permit is regulated by the permit.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 22) **Corrective Action May Be Required:** DEQ retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

**Rule:** OAR 340-041, OAR 340-012

**Justification:** DEQ must ensure that pollution does not enter waterways.

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## CATEGORY SPECIFIC CONDITIONS

In addition to all national and regional conditions of the USACE permit and the 401 Water Quality Certification general conditions above, the following conditions apply to the noted specific categories of authorized activities.

### NWP 7 – Outfall Structures and Associated Intake Structures:

7.1) The following actions are denied certification:

- a. Discharge outfalls that are not subject to an NPDES permit; and
- b. Outfalls that discharge stormwater without pollutant removal demonstrated to meet water-quality standards prior to discharge to waters of the state.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

7.2) If an Applicant cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines found at:

<http://www.oregon.gov/deg/FilterDocs/401wqcertPostCon.pdf> the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

### NWP 13 – Bank Stabilization:

13.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

13.2) Projects that propose permanent fill in adjacent wetlands are denied certification.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. Water adjacent wetlands provide water quality benefits.

13.3) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**Rule:** OAR 340-041-0059

**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

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#### **NWP 14 – Linear Transportation:**

- 14.1) For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.  
**Rule:** OAR 340-041, OAR 340-012, OAR 340-048  
**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.
- 14.2) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.  
**Rule:** OAR 340-041-0059  
**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

**NWP 16 - Return Water from Contained Upland Disposal Areas:** Water-quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 30, 31, and 40 at: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=68746>.

- 16.1) Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.  
**Rule:** OAR 340-041-0053(b)(A), OAR 340-041  
**Justification:** DEQ must ensure that pollution does not enter waterways.
- 16.2) Water removed with contaminated dredged material that could or does exceed chronic water-quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.  
**Rule:** OAR 340-041-0053(b)(A), OAR 340-041  
**Justification:** DEQ must ensure that pollution does not enter waterways.
- 16.3) If a Modified Elutriate Test (MET) is performed for the known contaminants of concern (CoCs) and CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited.
- a. The MET must be performed before dredging.
  - a. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
  - b. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.
- Rule:** OAR 340-041, OAR 340-012, OAR 340-048  
**Justification:** DEQ must ensure that pollution does not enter waterways.

#### **NWP 20 – Response Operations for Oil and Hazardous Waste:**

- 20.1) Coordination with DEQ's Emergency Response program is required. See: <http://www.oregon.gov/deg/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx>.  
**Rule:** OAR 340-142-0130(3), OAR 340-041  
**Justification:** DEQ must ensure that pollution does not enter waterways.

#### **NWP 22 – Removal of Vessels:**

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22.1) Coordination with DEQ's Emergency Response program is required. See: <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx>.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. Vessels may contain various fuels, lubricants, and other possible sources of pollution.

### **NWP 31 – Maintenance of Existing Flood Control Facilities:**

31.1) Projects in streams with temperature TMDLs which result in a net reduction of riparian shade are prohibited.

**Rule:** OAR 340-041-0028, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

### **NWP 38 – Cleanup of Hazardous and Toxic Waste:**

38.1) For removal of contaminated material from waters, dredging method is limited to diver assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry, unless otherwise authorized by DEQ.

a. For in-water isolation measures, the Applicant is referred to Appendix D of DEQ's Oregon Erosion and Sediment Control Manual, April 2005 (or most current version), at: [DEQ Erosion and Sediment Control Manual](#)

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

38.2) Discharge to waters of the state resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below.

- a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or,
- b. A Modified Elutriate Test (MET) may be performed for the known Contaminants of Concern (CoCs) and if CoC concentrations are below DEQ chronic water-quality criteria; return water discharge is not limited.
  - i. The MET must be performed before dredging.
  - ii. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
  - iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: <http://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/default.aspx>) or Solid Waste (see: <http://www.oregon.gov/deq/mm/swpermits/Pages/Solid-Waste-Disposal-Sites-and-Landfill.aspx>).

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

38.4) The new in-water surface must be managed to prevent exposure or mobilization of

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contaminants.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

#### **NWP 41 - Reshaping Existing Drainage Ditches:**

- 41.1) To the extent practicable, the Applicant must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 41.2) Following authorized work, the Applicant must establish in-stream and riparian vegetation on reshaped channels and side-channels using native plant species wherever practicable. Plantings must be targeted to address water-quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

**Rule:** OAR 340-041-0004(5)(a)

**Justification:** Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

#### **NWP 42 – Recreational Facilities:**

- 42.1) For facilities that include turf maintenance actions, the permittee must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at:

<http://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>).

**Rule:** OAR 340-041-0033, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways, including excess pesticides and fertilizers.

#### **NWP 43 – Stormwater Management Facilities:**

- 43.1) Projects that propose the following elements are denied expedited certification:
- In-stream stormwater facilities;
  - Discharge outfalls not subject to an MS4 NPDES permit; and,
  - Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

- 43.2) To apply for certification for a project with in-stream stormwater facilities, without an NPDES permit, or without submittal of an approvable stormwater management plan per DEQ's Guidelines (at: <http://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf>), the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**Rule:** OAR 340-041-0059

**Justification:** DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

#### **NWP 44 – Mining Activities:**

Project Name:  
Project Number:

- 44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied expedited certification.  
**Rule:** OAR 340-045-0033, OAR 340-041  
**Justification:** DEQ must ensure that pollution does not enter waterways. Excess turbidity can be considered pollution.
- 44.2) To apply for certification for a project without an NPDES permit, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.  
**Rule:** OAR 340-041-0059  
**Justification:** DEQ must ensure that pollution does not enter waterways.
- 44.3) The State of Oregon requires an In-Water Blasting Permit be obtained per OAR, 635-425-0000. Permittee is advised to contact the nearest ODFW office for further information at: <https://www.dfw.state.or.us/lands/inwater/>  
**Rule:** OAR 340-041-0011  
**Justification:** DEQ must be protective of all water quality standards, including beneficial uses such as fish.

#### **NWP 51 – Land-Based Renewable Energy Generation Facilities:**

- 51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition D.1 must be applied.  
**Rule:** OAR 340-041, OAR 340-012, OAR 340-048  
**Justification:** DEQ must ensure that pollution does not enter waterways

#### **NWP 53 – Removal of Low-Head Dams:**

- 53.1) Projects that do *not* go through a PSET review if sediments are being dispersed are denied certification.  
**Rule:** OAR 340-041, OAR 340-012, OAR 340-048  
**Justification:** DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.
- 53.2) To apply for certification for a project without a PSET, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.  
**Rule:** OAR 340-041-0059  
**Justification:** DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.

#### **NWP 54 – Living Shorelines:**

- 54.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.  
**Rule:** OAR 340-041, OAR 340-012, OAR 340-048  
**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion in the system.

#### **NWP 58 – Utility Lines:**

- 58.1) For proposals that include directionally-bored stream or wetland crossings:

**Project Name:**  
**Project Number:**

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable;
- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

**Rule:** OAR 340-142-0030, OAR 340-142-0040(1)

**Justification:** Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.

58.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232, within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Jeff Brittain, DEQ 401 Dredge and Fill Program Coordinator, at 503-229-5395, by email at [Jeffrey.Brittain@deq.oregon.gov](mailto:Jeffrey.Brittain@deq.oregon.gov), or at the address on this letterhead.

Sincerely,

Steve Mrazik,  
Water Quality Manager  
Northwest Region

ec: