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April 9, 2012

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Subject: 401 Water Quality Certification for 2012 Nationwide Permit Program

1.0 Background: On July 18, 2007, the Oregon Department of Environmental Quality issued a 401 Water Quality Certification for the five year duration of the US Army Corps of Engineers 2007 Nationwide Permit (NWP) package.

On February 16, 2011, the USACE published a notice in the Federal Register (Vol 76, No 32, 9174-9207) proposing reissuance of 48 of the existing NWP categories, issuance of two new NWP categories, general conditions, and definitions, all with some modifications. Additionally, on June 20, 2011, the Portland District USACE issued a special public notice to solicit comments on the proposed regional conditions for the 2012 NWPs. Prior to this notice, DEQ participated in an interagency workgroup with representatives from USACE, US Environmental Protection Agency, National Marine Fisheries Service, US Fish and Wildlife Service, Oregon Department of Land Conservation and Development, Oregon Department of Fish and Wildlife, and Oregon Department of State Lands to amend the 2007 USACE Portland District NWP regional conditions.

2.0 Public Notice: On January 10, 2012 DEQ requested public comments on a draft 401 Water Quality Certification evaluation and decision. DEQ considered all comments relevant to water quality before finalizing the decision.

3.0 Applicable Water Quality Regulations and DEQ Evaluations: DEQ is the agency of the State of Oregon designated to carry out the certification functions prescribed by Section 401 of the Clean Water Act. In the Section 401 certification process, the state acts under the authority of the federal law. However, the state must also comply with state law. In Oregon, statutory authority for Section 401 certification is contained in ORS chapter 468B. Administrative rules (OAR chapter 340, Division 48) prescribe the procedures for Section 401 certifications. Oregon's water quality regulations are contained in Oregon Administrative Rules (OAR) Chapter 340, Divisions 40 through 56 and 71. Division 40 contains the state's groundwater standards. Division 41 entitled "Water Quality Standards: Beneficial Uses, Policies, and Criteria for Oregon" contains the surface water standards, and is the most significant with respect to Section 401 certification evaluation of a proposed project. The requirements and standards set forth in Division 41 were adopted to comply with the surface water quality protection provisions of both state and federal law. The water quality standards in Division 41 are composed of three elements: beneficial uses, water quality criteria (both narrative and numeric), and the antidegradation policy.

DEQ has determined that 2012 NWP categories authorized under both Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act may result in a discharge to waters of the state and are therefore subject to this 401 Water Quality Certification. However, actions that USACE determines, with input from DEQ, will not result in a discharge to waters of the state, are not subject to the terms of this 401 Water Quality Certification.

4.0 Federally Authorized Actions Description: On February 21, 2012, USACE published a notice in the Federal Register announcing the reissuance of all existing NWPs, general conditions, and definitions with some modifications. As noted in the Federal Register, activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effect on the aquatic environment. As such, categories have impact threshold limitations and specific activity prohibitions. Impacts are further limited by Nationwide General Conditions, Regional General Conditions and Category Specific Conditions.

5.0 Status of Affected Waters: As a nationwide, general permit program, activities proposed could affect any water of the state, defined in ORS 468B.005 as lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

DEQ has not designated any Outstanding Waters in Oregon. High Quality Waters include the Clackamas River, the North Santiam River, and the McKenzie River (above river mile 15), as described in DEQ's Three Basin Rule (OAR 340-041-0350) and all waterbodies that are *not* listed for any parameters per the Clean Water Act Section 303(d) list of impaired waterbodies. Water Quality Limited Waters include all waterbodies listed as impaired, including those for which a Total Maximum Daily Load (TMDL) has been developed to address impairments, in DEQ's most current Water Quality Assessment Integrated Report (available at: http://www.deq.state.or.us/wq/assessment/rpt0406/search.asp).

6.0 Beneficial Uses: Both Oregon Law and the federal Clean Water Act are structured to require that water quality be protected and maintained so that existing designated and potential beneficial uses of public waters are not impaired or precluded by degraded water quality. Designated beneficial uses of Oregon's waters are available at: http://www.deq.state.or.us/wq/standards/uses.htm. In general, it is assumed that achieving a water quality standard that fully protects the most sensitive beneficial use, then all beneficial uses are fully protected.

7.0 Potential Modification of Waters of the State and Antidegradation Evaluation: In consideration of the activities proposed for authorization under the USACE 2012 NWP package, DEQ has determined that impacts to waters of the state could be reasonably expected to occur.

For activities that DEQ has determined would result in more than minimal potential water quality and beneficial use impacts, DEQ has not evaluated these categories for certification under this

"programmatic" 401 decision, but rather, will evaluate each individually in order to provide conditions or denial of certification protective of water quality.

The majority of the proposed activities will be limited in duration and magnitude of impact. This is because these activities are short-term and are limited in scope by the language of the permitted categories, definitions, and general conditions. The Portland District Regional Conditions further limit the location, scope, timing, and methodology of permitted activities, as well as providing additional protective measures and assurances for implementation of contingency and compensatory mitigation measures.

In consideration of the potential for exceedance of the Turbidity standard and long-term impacts, such as generation of polluted stormwater runoff from new and existing impervious surfaces made contiguous as a result of project activities, DEQ has included additional general water quality conditions to limit the magnitude and duration of allowable short-term exceedances and avoidance of long-term exceedances. Implementation of these conditions will address the majority of potential impacts to the water quality criteria of Bacteria, Biocriteria, Dissolved Oxygen, Narrative Criteria, Nuisance Phytoplankton Growth, pH, Temperature, Total Dissolved Gas, Total Dissolved Solids, Toxic Substances, Turbidity, and Basin-Specific Criteria.

In addition, DEQ has identified 14 categories of activities (as noted in Tables 10.1 and 10.2 below) that require additional category specific water quality conditions to further limit activities or provide additional control measures to protect water quality and beneficial uses that could be impaired as a result of these activities.

As such, DEQ is reasonably assured that no significant lowering of water quality will occur as a result of the actions proposed for certification or partial certification, and these actions will be in compliance with DEQ's Antidegradation Policy, provided all permit limitations, national general conditions regional general and category specific conditions and water quality general and category specific conditions are included in the federal permit and strictly adhered to by the permittee and their contractors.

8.0 Evaluation of Other Water Quality Related Requirements of State Law: In consideration of state statutes and rules promulgated pursuant to statutes with explicit references to water quality, factors necessary for maintenance of, or evaluation of water quality, or reasonably expected impacts to water quality that could be applicable to the actions authorized by the various categories of the USACE 2012 NWP permit, DEQ has identified the following potential water quality related requirements of state law:

TABLE 8.0:
OTHER POTENTIAL WATER QUALITY RELATED REQUIREMENTS OF STATE LAW

STATUTE (ORS) OR RULE (OAR)	SUMMARY
ORS 196.795 to 196.990	Requires that permits be obtained from DSL prior to any fill and removal of material from the bed or banks of any stream. Such permits, when issued, may be expected to contain conditions to assure protection of water quality so as to protect fish and aquatic habitat.
ORS 496.012	Sets wildlife policy for prevention of depletion of indigenous species and toward wildlife resource decisions to be made in the best social, economical and recreational interests of all user groups.
ORS 496.164	Provides for cooperation and technical assistance to other agencies with regard to wildlife resource management.

ORS 496.170 to 496.192	Requires collection and analysis of scientific data to determine and inventory biological status of species, develop conservation strategies, and provide recommendations to other agencies regarding actions affecting threatened or endangered species.
OAR 635-007-0502 et. seq.	Native fish conservation policy – protection of natural ecological communities and habitats tailored to individual watersheds and situations.
OAR 635-059-0000 et. seq.	Aquatic invasive species control.
OAR 635-100-0150	Requires consultation with ODFW on affects to endangered species.
OAR 635-410-0000	Natural resource losses.
OAR 635-412-0005 et. seq.	Addresses fish passage.
OAR 635-413-0000 et. seq.	Fish habitat mitigation policy.
OAR 635-500-0002 et. seq.	Addresses fish management plans.
ORS 468B.155	Prevention of groundwater contamination.
ORS 468B.160 (5)	Triggers action to prevent groundwater contamination or restore acceptable levels.
OAR 340-040-0030	Permitted operation (5) action requirements and (6) remedial action requirements.
OAR 340-041-0350	Prohibits new or increased wastewater discharge in the McKenzie, Clackamas and North Santiam rivers.
OAR 340-045	Pertaining to NPDES and WPCF permits.
ORS 466.635 to 466.645	Requirements for reporting and cleanup of spills of petroleum products and hazardous materials.
ORS 197.180	State agencies are required to make decisions in programs affecting land use that comply with Statewide Goals and that are compatible with those local land use plans and regulations that have been determined to comply with the Goals. Plans and regulations that comply with the Goals are referred to as "acknowledged."
ORS 541-351 et. seq.	Oregon Plan for Salmon and Watersheds.
OAR 690-009	Groundwater interference with surface water.
OAR 690-010	Appropriation and use of groundwater.
OAR 690- 012	Out-of-basin diversion.
OAR 690-020	Dam safety.
OAR 690-28	Surface water registrations.
OAR 690-033	Standards for new appropriations.
OAR 690-051	Standards for appropriation and use of water for hydroelectric projects.
OAR 690-077	In-stream water rights.
OAR 690-086	Water management and conservation plans.

In compliance with 33 USC 1341(d) and OAR 340-048-0025, DEQ has included conditions in the 401 Water Quality Certification that are consistent with these other requirements of state law. However, issuance of a 401 Water Quality Certification does not obviate the need for any applicable permits, licenses, or other permissions required by local, state, or federal laws as interpreted by the agency charged with implementing the laws.

9.0 Evaluation of Compliance with Clean Water Act Sections 301, 302, 303, 306, and 307: Sections 301, 302, 306, and 307 of the federal Clean Water Act establish effluent limitations, water quality related effluent limitations, national standards of performance for new sources, and toxic and pretreatment standards, respectively. These requirements relate to point source discharges and are the foundation for conditions to be incorporated in National Pollutant Discharge Elimination System permits issued to the point sources. Activities authorized under USACE NWP categories, and certified by DEQ under the 2012 NWP 401 Water Quality Certification must also apply for, obtain, and implement all required NPDES permits.

Section 303 of the Act relates to Water Quality Standards and Implementation Plans. The EPA has adopted regulations to implement Section 303 of the Act. Oregon's Environmental Quality Commission has adopted water quality standards consistent with the requirements of Section 303 and the applicable EPA rules. The EQC standards are codified in Oregon Administrative Rules Chapter 340, Division 41. The EPA has approved the Oregon standards pursuant to the

requirements of Section 303 of the Act. Therefore, activities authorized under USACE's 2012 NWPs must comply with Oregon Water Quality Standards and Total Maximum Daily Loads to qualify for certification. In section 7.0 Potential Modification of Waters of the State and Antidegradation Evaluation, DEQ considered potential impacts within each category of activity and detailed conditions necessary for DEQ to include in the 401 Water Quality Certification decision in order to ensure compliance with water quality standards, TMDLs, and other policies.

10.0 Certification Decision: A list of DEQ water quality certification conditions, both general and activity specific, is attached to and made a part of this 401 WQC. Each activity considered for authorization under the 2012 Nationwide Permit Program in Oregon must comply with the applicable conditions and criteria. DEQ reserves the right to modify these conditions as necessary to ensure compliance with water quality standards and programs of any permit, license, or project where necessary on a case-by-case basis.

Based on DEQ's evaluation of the 2012 NWPs and analysis of authorizations in Oregon by category over the duration of the previous 2007 NWP package, DEQ is reasonably assured that authorizations issued under the 2012 NWP package will be consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in OAR Chapter 340 Division 41, and other appropriate requirements of state law, provided the conditions in the Appendix are made part of the USACE permits and are strictly adhered to by permittees and their contractors.

10.1 Certified NWP Categories

Table 10.1 lists the NWP categories that are water quality certified subject to all applicable NWP general conditions, USACE Portland District regional conditions and general and category specific water quality conditions are contained in the Appendix to this 401 certification.

TABLE 10.1:
CERTIFIED 2012 NWP CATEGORIES

#	CERTIFIED CATEGORY	NOTES
1	Aids to Navigation	Section 10 with minimal, if any, discharge
2	Structures in Artificial Canals	Section 10 with minimal, if any, discharge
3	Maintenance	General conditions appropriate
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Minimal impact
5	Scientific Measurement Devices	Minimal impact
6	Survey Activities	Minimal impact
9	Structures in Fleeting and Anchorage Areas	Section 10 with minimal, if any, discharge
10	Mooring Buoys	Section 10 with minimal, if any, discharge
11	Temporary Recreation	Section 10 with minimal, if any, discharge
12	Utility Line Activities	Specific conditions needed
14	Linear Transportation Projects	Specific conditions needed
15	US Coast Guard Bridges	General conditions appropriate
18	Minor Discharges	General conditions appropriate
19	Minor Dredging	General conditions appropriate

20	Response Operations for Oil and Hazardous Substances	Specific conditions needed
22	Removal of Vessels	Specific conditions needed
23	Approved Categorical Exclusions	General conditions appropriate
25	Structural Discharges	Minimal impact
27	Aquatic Habitat Restoration, Establishment, & Enhancement Activities	General conditions appropriate
28	Modifications of Existing Marinas	Section 10 with minimal, if any, discharge
29	Residential Developments	General conditions appropriate
30	Moist Soil Management for Wildlife	Minimal impact
32	Completed Enforcement Actions	General conditions appropriate
33	Temporary Construction, Access and Dewatering	General conditions appropriate
35	Maintenance Dredging of Existing Basins	Section 10 with minimal, if any, discharge
36	Boat Ramps	General conditions appropriate
37	Emergency Watershed Protection and Rehabilitation	Minimal impact
38	Cleanup of Hazardous and Toxic Waste	Specific conditions needed
39	Commercial & Institutional Developments	General conditions appropriate
41	Reshaping Existing Drainage Ditches	Specific conditions needed
42	Recreational Facilities	Specific conditions needed
45	Repair of Uplands Damaged by Discrete Events	General conditions appropriate
48	Existing Commercial Shellfish Aquaculture Activities	General conditions appropriate
51	Land-Based Renewable Energy Generation Facilities	Specific conditions needed

10.2 Partially Certified Nationwide Permits

The specified sections of the following NWP categories are denied certification and must undergo individual review and evaluation for 401 Water Quality Certification. Applications which do not include the prohibited sections are certified, subject to all applicable NWP general conditions, USACE Portland District regional conditions and general and category specific water quality conditions contained in the Appendix to this 401 certification.

TABLE 10.2:
PARTIALLY CERTIFIED 2012 NWP CATEGORIES

#	PARTIALLY CERTIFIED CATEGORY	ACTIVITES DENIED 401 CERTIFICATION
7	Outfall Structures & Associated Intake Structures	Discharge outfalls: 1) Not subject to an NPDES permit; or 2) That do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state are denied certification.
13	Bank Stabilization	Projects that: 1) Do *not* include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions as the *only* way to protect an *existing* transportation related structure); or 2) That proposes permanent fill in adjacent wetlands are denied certification.
16	Return Water from Contained Upland Disposal Areas	Return water exceeding chronic water quality criteria for toxics is denied certification.

31	Maintenance of Existing Flood Control Facilities	Projects in streams with Temperature TMDLs that propose vegetation removal are denied certification.
43	Stormwater Management Facilities	1) In-stream stormwater facilities, 2) Discharge outfalls not subject to and NPDES permit, and 3) Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state are denied certification.
44	Mining Activities	Projects that do *not* obtain an NPDES 700-PM or Individual permit are denied certification.

10.3 Nationwide Permits Denied Certification

The following NWP categories are denied water quality certification in their entirety. Each category was reviewed and it was determined that: potential water quality and beneficial use impacts would be beyond that considered minimal; the activity was not likely to occur in Oregon; inadequate data was available for DEQ to fully evaluate potential water quality and beneficial use impacts; or the category was empty (reserved). Permittees wishing to pursue NWPs for projects in these categories must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 Water Quality Certification evaluation and fulfill public participation requirements. 401 Water Quality Certification application and process information is available at: http://www.deq.state.or.us/wq/sec401cert/removalfill.htm.

TABLE 10.3:
2012 NWP DENIED CATEGORIES

#	DENIED CATEGORY
8	Oil & Gas Structures on the Outer Continental Shelf
17	Hydropower Projects
21	Surface Coal Mining Activities
24	Indian Tribe or State Administered Section 404 Program
26	[Reserved]
34	Cranberry Production Activities
40	Agricultural Activities
46	Discharges in Ditches
47	[Reserved]
49	Coal Re-mining Activities
50	Underground Coal Mining
52	Water-Based Renewable Energy Generation Pilot Projects

11.0 Duration of Certification: This 401 Water Quality Certification decision will be in effect from the date of signature, April 9, 2012, until expiration of the USACE 2012 NWP package.

12.0 Opportunity to Appeal: If USACE is dissatisfied with the conditions contained in this certification, a contested case hearing may be requested, in accordance with OAR 340-048-0045. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 811SW 6th Avenue, Portland Oregon 97204, within 20 days of the mailing of this certification.

Please direct any questions about this 2012 NWP 401 WQC to the DEQ 401 Water Quality Certification Coordinator at (503) 229-6030, or by email at anderson.peter@deq.state.or.us. Thank you for your continued cooperation in protecting Oregon's water quality and natural resources.

Sincerely,

Steve Mrazik,
Water Quality Manager
Northwest Region

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cc: Juna Hickner, DLCD
Marc Liverman, NMFS
Yvonne Vallette, EPA
Joe Zisa, USFWS
Jon Germond, ODFW
Bill Ryan, DSL

Appendix

General Conditions

In addition to all USACE national and regional permit conditions, the following 401 Water Quality Certification conditions apply to all NWP categories certified or partially certified. Additional 401 Water Quality Certification category specific conditions follow, which must also be complied with as applicable.

1) **Turbidity:** All Permittees must implement all reasonably availably technological controls and management practices to meet the standard in rule of no more than a 10% increase in project caused turbidity above background levels. However, if all reasonably available controls and practices are implemented by a permittee, turbidity exceedances of more than 10% above background are allowed for limited times depending on the severity of the increase, as specified in this condition.

   a. **Monitoring and Compliance Requirements:** Permittees must monitor and record in a daily log stream turbidity levels during work below ordinary high water, compare turbidity caused by authorized actions to background levels, and adapt activities to minimize project-caused turbidity. Required monitoring steps include:

      i. Identify two monitoring locations:

         A. Background location: A relatively undisturbed location, approximately 100 feet upcurrent from the disturbing activity; and,

         B. Compliance location: A location downcurrent from the disturbing activity, at approximately mid-depth, within any visible plume, and at the distance that corresponds to the size of the waterbody where work is taking place as listed in the table below:

WETTED STREAM WIDTH	COMPLIANCE DISTANCE
Up to 30 feet	50 feet
>30 feet to 100 feet	100 feet
>100 feet to 200	200 feet
>200 feet	300 feet
LAKE, POND, RESERVOIR	Lesser of 100 feet or maximum surface dimension

      ii. Determine Compliance:

         A. At the start of work, measure turbidity at both locations and record in the daily log date, time, location, tidal stage (if waterbody is tidally influenced), and turbidity levels at each point and

comparison. Permittee must also record in the daily log all controls and practices implemented at start of work.

B. During work, measure turbidity at both locations at the frequency directed in the tables below and record in the daily log date, time, location, tidal stage (if waterbody is tidally influenced), and turbidity measurements.

C. Turbidity measurements must be representative of stream turbidity when the activity is being conducted. Measurements can not be taken during a cessation of activity.

D. If project caused turbidity is elevated above background, Permittee must implement additional controls and practices and monitor both points again as described below for either monitoring method. A description of the additional controls and the date, time and location where they are implemented must be recorded in the daily log:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1ST MONITORING INTERVAL	ACTION REQUIRED AT 2ND MONITORING INTERVAL
0 to 5 NTU above background	Continue to monitor every 4 hours	Continue to monitor every 4 hours
5 to 29 NTU above background	Modify controls & continue to monitor every 4 hours	Stop work after 8 hours at 5-29 NTU above background
30 to 49 NTU above background	Modify controls & continue to monitor every 2 hours	Stop work after 2 confirmed hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work

VISUAL MONITORING*		
No plume observed	Continue to monitor every 4 hours	Continue to monitor every 4 hours
Plume observed within compliance distance	Modify controls & continue to monitor every 4 hours	Stop work after 8 hours with an observed plume within compliance distance
Plume observed beyond compliance distance	Stop work	Stop work
**Note: Monitoring visually may require stopping work as soon as the visual plume exceeds the waterbody specific compliance distance. However, using a turbidimeter can allow work to continue based on a more precise determination of the severity of turbidity increase over time.*		

iii. Work must **stop immediately for the remainder of that 24-hour period** if:

A. A visible turbidity plume extends beyond the compliance distance; or,

B. Turbidity is measured at the compliance point at:

I. 50 NTU or more over background at any time;

II. 30 NTU over background for 2 hours; or

III. 5-29 NTU over background for 8 hours.

iv. Work may continue if no visible plume is observed, turbidity measured at the compliance point is no more than 0-5 NTU above background, or additional control measures can be applied to keep the visible plume within the compliance distance, measured turbidity ranges, and durations listed in the tables above.

b. **Turbidity Control Measures -** The permittee must implement all reasonably available controls and practices to minimize turbidity during in-water work, which may include, but are not limited to:

i. Schedule, sequence or phase work activities so as to minimize in-water disturbance and duration of activities below ordinary high water;

ii. Install and maintain containment measures to prevent erosion of upland material to waterways and wetlands, isolate work areas from flowing waters, and prevent suspension of in-stream sediments to the maximum extent practicable;

iii. Apply control measures for all in-stream digging, including but not limited to: 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 loads or hydraulic suction equipment; or by using a closed-lipped environmental bucket;

iv. Limit the number and location of stream crossing events. If equipment must cross a waterway, establish temporary crossing sites at an area with stable banks, where the least vegetation disturbance will occur, shortest distance across water, oriented perpendicular to the stream, and supplement with clean gravel or other temporary methods as appropriate;

v. Place excavated, disturbed, and stockpiled material so that it is isolated from the edge of waterways and wetlands and not allowed to enter waters of the state uncontrolled; and,

vi. Apply other effective turbidity control techniques, such as those in Appendix D and throughout DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf.

c. **Reporting:** Copies of daily logs for turbidity monitoring must be made available to DEQ and other regulatory agencies upon request. The log must include:

i. Background NTUs or observation, compliance point NTUs or observation, comparison of the points in NTUs or narrative, and location, time, date, and tidal stage (if applicable) for each reading or observation.

ii. A narrative discussing all exceedances, controls applied and their effectiveness, subsequent monitoring, work stoppages, and any other actions taken.

2) **Stormwater Discharge Pollution Prevention:** All projects that involve land disturbance or impervious surfaces must implement prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the state.

a. For land disturbances during construction, the permittee must obtain and implement permits where required (see: http://www.deq.state.or.us/wq/stormwater/construction.htm) and follow DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005 (or most current version), http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf.

b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided (including but not limited to NWP categories 3, 12, 14, 15, 28, 29, 31, 32, 36, 39, 42, 43, and 51). DEQ encourages prevention of discharge by managing stormwater on site through Low Impact Development principles and other prevention techniques. Assistance in developing an approvable stormwater management plan is available in DEQ's *Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications Which Involve Impervious Surfaces*, January 2012 (or most current version), available at: http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf.

c. In lieu of a complete stormwater management plan, the applicant may submit:

i. Documentation of acceptance of the stormwater into a DEQ permitted National Pollutant Discharge Elimination Strategy (NPDES) Phase I or II Municipal Separate Storm Sewer System (MS4); or

ii. Reference to implementation of a programmatic process developed to achieve these expectations, and acknowledged by DEQ as adequately addressing pollution control or reduction through basin-wide post-construction storrmwater management practices.

3) **Vegetation Protection and Restoration:** Riparian, wetland, and in-water vegetation in the authorized project area must be protected from unnecessary disturbance to the maximum extent practicable through methods including:

a. Minimization of project and impact footprint;

b. Designation of staging areas and access points in open, upland areas;

c. Fencing or other barriers demarking construction areas;

d. Use of alternative equipment (e.g., spider hoe or crane); and,

e. Replacement - If authorized work results in unavoidable vegetative disturbance that has not been accounted for in planned mitigation actions; riparian, wetland and in-water vegetation must be successfully reestablished to a degree that it functions (for water quality purposes) at least as well as it did before the disturbance. The vegetation must be reestablished by the completion of authorized work.

4) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each permittee 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 Block 7 of the USACE & DSL 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.

5) A copy of all applicable 401 WQC conditions must be kept on the job site and readily available for reference by the permittee, their contractors, DEQ, USACE, NMFS, USFWS, DSL, ODFW, and other appropriate state and local government inspectors.

6) DEQ may modify or revoke these 401 WQC conditions, in accordance with OAR 340-048-0050, in the event that project activities are having a significant adverse impact on state water quality or beneficial uses.

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.

7.2) If a permittee cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines (at: http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf), the permittee 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.

NWP 12 – Utility Lines:

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

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 800-452-0311.

c. Prior to cleaning up drilling fluids spilled into waters of the state, cleanup plans must be submitted and approved by the regulatory agencies; and

d. 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.

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 to protect an existing transportation-related structure.

13.2) To apply for certification for a project without bioengineering, the permittee 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.

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 to protect an existing transportation related structure.

14.2) To apply for certification for a project without bioengineering, the permittee 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.

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 20, 33A, 33B, and 33C at: http://www.deq.state.or.us/wq/standards/toxics.htm#Cur.

16.1) Return to waters of the state of water removed with contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is denied certification.

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.

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.

b. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.

c. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

NWP 20 – Response Operations for Oil and Hazardous Waste:

20.1) Coordination with DEQ's Emergency Response program is required. See: http://www.deq.state.or.us/lq/cu/emergency/index.htm.

NWP 22 – Removal of Vessels:

22.1) Coordination with DEQ's Emergency Response program is required. See: http://www.deq.state.or.us/lq/cu/emergency/index.htm.

NWP 31 – Maintenance of Existing Flood Control Facilities:

31.1) Projects at existing facilities in streams with Temperature TMDLs and that propose net permanent, riparian vegetation removal are denied certification.

31.2) To apply for certification for projects where riparian vegetation removal is unavoidable and vegetation cannot be re-established, the permittee 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.

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.

a. For in-water isolation measures, the permittee is referred to Appendix D of DEQ's *Oregon Erosion and Sediment Control Manual*, April 2005 (or most current version), at: http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf.

38.2) Discharge to waters 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 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

permittee performing the MET.

iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: http://www.deq.state.or.us/lq/hw/hwmanagement.htm) or Solid Waste (see: http://www.deq.state.or.us/lq/sw/index.htm).

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

NWP 41 - Reshaping Existing Drainage Ditches:

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

41.2) Following authorized work, permittee 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.

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.deq.state.or.us/wq/wqpermit/pesticides.htm).

NWP 43 – Stormwater Management Facilities:

43.1) Projects that propose the following elements are denied certification:

a. In-stream stormwater facilities;

b. Discharge outfalls not subject to an NPDES permit; and,

c. Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

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.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf), the permittee 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.

NWP 44 – Mining Activities:

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied certification.

44.2) To apply for certification for a project without an NPDES permit, the permittee 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.

NWP 51 – Land-Based Renewable Energy Generation Facilities:

51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition 12.1) must be applied.