

# Environmental Protection Agency Region 10

## 401 Water Quality Certification Conditions

March 5, 2021

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The EPA has 401 certification authority in Indian Country. Indian Country includes lands within Reservation boundaries, lands held in trust by the Federal Government outside of Reservation boundaries, and “In-Lieu” sites (e.g., in-lieu fishing sites along the Columbia River). EPA also has WQC authority on lands with exclusive Federal jurisdiction; currently the only such land within the state of Oregon is the dam at Willamette Falls. EPA provided certification for the 2021 NWP by letter dated December 11, 2020.

### U.S. Environmental Protection Agency's Region 10 Programmatic Water Quality Conditions for the 2021 U.S. Army Corps of Engineers Nationwide Permits on Tribal Lands without Treatment as a State and Lands with Exclusive Federal Jurisdiction in Oregon

In addition to all the U.S. Army Corps of Engineers' National and Portland District's Regional permit conditions, the following EPA Section 401 water quality certification General Conditions applies to Nationwide Permit 40.

#### **EPA GENERAL CONDITIONS:**

##### **EPA General Condition 1 – Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions**

For land disturbances during construction that disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land, the permittee must obtain and implement Construction Stormwater General Permit requirements,<sup>5</sup> including:

- a. The permittee must develop an appropriate Stormwater Pollution Prevention Plan (SWPPP); and
- b. Following construction, prevention or treatment of ongoing stormwater runoff from impervious surfaces that includes soil infiltration must be implemented.

##### **EPA General Condition 2 – Projects or Activities Discharging to Impaired Waters**

Projects or activities are not authorized under the NWPs if the project will involve point source discharges into an active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody and the discharge may result in further exceedance of a specific parameter (e.g. total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed. The current lists of 303(d) and TMDL listed waterbodies are available on EPA Region 10's web site at:

<https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10>.

### **EPA General Condition 3 – Notice to EPA**

All applicants must provide notice to EPA Region 10 prior to commencing construction to provide EPA Region 10 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the applicant should also provide the PCN to Region 10. EPA Region 10 will provide written notification to the applicant if the proposed project will violate the water quality certification of the NWP.

### **EPA General Condition 4 – Unsuitable Materials**

The applicant shall not cause a point source discharge of toxic chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol) into waters of the United States during installation or removal of structures, unless the structures meet the following conditions:

- a. Wood preservatives and their application must be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act;
- b. Discharges of chemically treated wood products must follow the Western Wood Preservatives Institute (WWPI) guidelines and best management practices to minimize the preservative migrating from treated wood into the aquatic environment;
- c. For new or replacement wood structures installed into waters of the United States, the wood must be sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood are encouraged and include untreated wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and
- d. All removal of chemically treated wood products (including pilings) must follow the most recent “EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State.”

EPA Region 10 denied certification for NWPs 12, 21, 29, 39, 42, 43, 44, 48, 50, 51, 52, 56, 57 and 58. Applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Corps did not request certification for NWP 55.