

# Oregon Department of Environmental Quality

## Clean Water Act 401 Water Quality Certifications (WQC)

### Wild, Scenic and Beyond! 2018 River Management Symposium

October 23, 2018

401 WQC =

401 Water Quality  
Certification

# What You Will Hear Today

- What is a 401 WQC?
- Who must obtain one?
- What types of activities require one?
- Post Construction Stormwater Management
- How long is the process?
- How much does it cost?

# A 401 WQC is a document that certifies a project meets

- certain Clean Water Act requirements
- state water quality standards and
- other water-quality related requirements of State law

# Basis of Review – Water Quality Standards

1. Water Quality Criteria
2. Beneficial Uses
3. Antidegradation

# Water Quality Criteria

- Narrative Criteria
- Bacteria
- Biocriteria
- Dissolved Oxygen
- Nuisance  
Phytoplankton  
Growth
- pH
- Temperature
- Total Dissolved Gas
- Total Dissolved Solids
- Toxic Substances
- Turbidity
- Basin-Specific Criteria
  - DO, TSS, BOD, pH,  
Phosphorus, TDG

# Beneficial Uses

- domestic water supply
- fishing
- industrial water supply
- boating
- irrigation
- water contact recreation
- livestock watering
- aesthetic quality
- fish and aquatic life
- hydropower
- wildlife and hunting
- commercial navigation and transportation

# Antidegradation

- DEQ's antidegradation policy ([OAR 340-041-0004](#)) is designed to protect water from further degradation from new or increased sources of pollution and protects, maintains, and enhances surface water quality to protect existing beneficial uses.



# Who must obtain a 401 WQC?

Any applicant for a federal license or permit to conduct any activity which may result in any discharge into navigable waters



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No federal license or permit required =  
no 401 WQC required

# Who must obtain a 401 WQC?

Any applicant for a federal license or permit to conduct any activity which may result in any discharge into navigable waters

‘Navigable waters’ includes upstream waters and adjacent wetlands (federal agency determines)

# Most common activities requiring a 401 WQC

## Corps-permitted activities in wetlands and waterways



# Typical Application Process

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## Section 404 Dredge/Fill Permit



## Section 10 Permit



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Section 404 Dredge/Fill Permit

Nationwide or Individual



Section 10 Permit





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4. DEQ reviews JPA of 404 permits and some Section 10 permits, often will request additional information specific to water quality, and assesses a fee

# Nationwide Permits

- Corps decides if it's a nationwide permit
- DEQ reviews and determines 401 WQC path

Certified	Partially Certified	Denied
401 WQC conditions specific to the nationwide permit	401 WQC conditions specific to the nationwide permit if the project meets certain conditions; otherwise needs an individual 401 WQC	Needs an individual 401 WQC

# Nationwide Permits

- Corps decides if it's a nationwide permit
- DEQ reviews and determines 401 WQC path

Certified	Partially Certified	Denied
NWP 3 maintenance NWP 27 restoration NWP 36 boat ramps	NWP 13 bank stabilization  NWP 7 outfall & associated intake structures	NWP 40 agricultural activities

# 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 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.

# Division 13

## WILDERNESS, RECREATIONAL, AND SCENIC AREA RULES


- (1) Except as provided in section (2) of this rule, no person engaged in an activity other than emergency or recreational within a wilderness area shall:
  - (b) Discharge any waste into waters or conduct any activity which causes or is likely to cause:
    - (A) Any measurable increase in color, turbidity, temperature, or bacterial contamination;
    - (B) Any measurable decrease in dissolved oxygen;
    - (C) Any change in hydrogen ion concentration (pH); or
    - (D) Any toxic effect on natural biota.

# Section 401 Water Quality Certification Post-Construction Stormwater Management Plan Submission Guidelines

March 2018

# NEW! March 2018

[http://www.oregon.gov/  
deq/wq/wqpermits/Pages  
/Section-401-  
Certification.aspx](http://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401-Certification.aspx)

A stylized, monochromatic illustration of a natural landscape. It features rolling hills, a winding river or stream in the foreground, two evergreen trees on the right, and a sun partially obscured by clouds in the upper center.

DEQ Water Quality  
401 Program  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
Contact: Amy Simpson  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

DEQ is a leader in  
restoring,  
maintaining and  
enhancing the quality  
of Oregon's air, land  
and water.



State of Oregon  
Department of  
Environmental  
Quality

# Impervious Surface





# Complete SWMP

Must demonstrate post-construction stormwater runoff generated by the water quality storm event on the contributing impervious area (CIA) will receive any necessary treatment prior to discharge to waters of the state unless infeasible\*

\*If infeasible (e.g., a highway along a cliff), treat equivalent offsite area.

# 401 WQC Fees

- OAR Chapter 340 Division 48
- based on level of complexity and review time

<i>Tier</i>	<i>Fee</i>	<i>Typical Example</i>
1	\$985	Certified nationwide and partially certified nationwide that meet the requirements
2A	\$4,390	Small individuals
2B	\$12,105	Mid-size individuals
3	\$17,780	Large individuals
4	Negotiated	Unusual cases

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4. DEQ reviews JPA of 404 permits and some Section 10 permits, may request info, and assesses fee
5. 401 WQC staff may coordinate with other programs and agencies and may request additional info

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5. 401 WQC staff may coordinate with other programs and agencies and may request additional info
6. After receiving a complete application, DEQ must issue a decision within a reasonable time period (1 yr)

# Decision Options

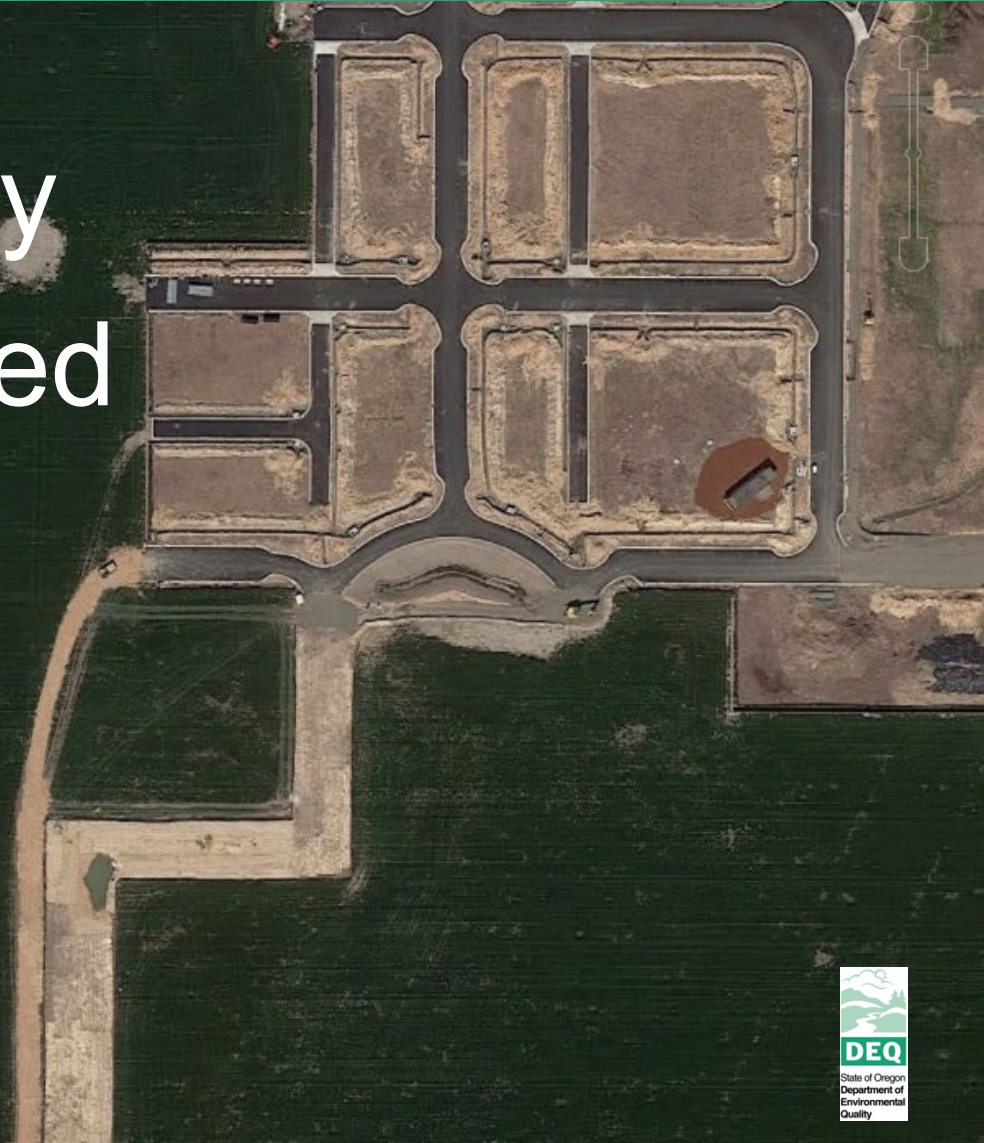
- Certify outright
- Certify with conditions
- Waive
  - DEQ does not waive certifications
- Deny certification
  - Federal permit cannot be issued

# A 401 Water Quality Certification (WQC) is a document that certifies a project meets

- certain Clean Water Act requirements
- state water quality standards and
- other water-quality related requirements of State law

# 401 WQC Conditions...

Any water quality  
Impact; not limited  
to the discharge



# Conditions





# 1200-C : Some Things to Watch For



# Duration of 401 WQCs

- Typically 5 years, sometimes 10 years
- Can be in perpetuity for operations
  - Stormwater operations & maintenance
  - Dam operations

# Tips for Success

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- Coordinate early – monthly state and federal pre-app meetings

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- Submit a **complete application** early

# Application Should...

## **Be Completely Filled Out**

- Signed land use compatibility statement
- List of adjacent properties owners

## **Describe**

- Project purpose
- Timelines
- Site (features, contamination)
- Limits of construction, stockpile areas
- Construction methods
- Water quality impacts
- Measures to reduce water quality impacts

## **Identify Receiving Waters**



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- Submit a complete application early
- Be prepared to provide additional water-quality specific information

# Tips for Success

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- Design project to fit under a certified nationwide if possible
- Coordinate early
- Submit a complete application early
- Be prepared to provide additional water-quality specific information
- Communicate any modifications, schedule updates, etc

# Questions?

- Sara Christensen:** Statewide Program Coordinator  
[Christensen.Sara@deq.state.or.us](mailto:Christensen.Sara@deq.state.or.us)  
(541) 633-2007
- Dan DeFehr:** Statewide Nationwide 401 WQCs  
[Defehr.Daniel@deq.state.or.us](mailto:Defehr.Daniel@deq.state.or.us)  
(503) 229-5395
- Blair Edwards:** Individual 401 WQCs in NW & Eastern OR  
[Edwards.Blair@deq.state.or.us](mailto:Edwards.Blair@deq.state.or.us)  
(503) 229-5051
- Alex Holecek:** Individual 401 WQCs in Western OR  
[Holecek.Alex@deq.state.or.us](mailto:Holecek.Alex@deq.state.or.us)  
(541) 686-7763