



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

Northwest Region Portland Office

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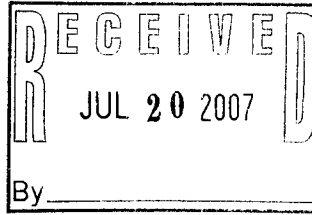
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July 18, 2007



Colonel O'Donovan  
U.S. Army Corps of Engineers  
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Attn: Lawrence Evans, Regulatory Branch Chief  
Judy Linton, 2007 NWP District Coordinator

Subject: 401 Water Quality Certification for 2007 Nationwide Permit Program

On September 26, 2006, the US Army Corps of Engineers (USACE) published a notice in the Federal Register (71 FR 56257-56299) proposing issuance of six new Nationwide Permits (NWP) along with reissuance of 44 existing NWP, General Conditions and Definitions, all with some modifications. Additionally, on September 26, 2006 the Portland District, USACE, issued a Special Public Notice for reissuance of Nationwide Permits and Regional Conditions. Comments concerning retention or modification of the existing Regional Conditions, were solicited from the public. The Department of Environmental Quality (DEQ) participated in an interagency workgroup joining with representatives from USACE, Department of Land Conservation and Development (DLCD), National Marine Fisheries Service (NMFS), US Fish and Wildlife Service (USFWS) and US Environmental Protection Agency (EPA) which met and communicated several times to amend, align, and add to the existing Regional Conditions. Prior to completion of this interagency process and publication of the final Regional Conditions and Requirements, USACE published the 50 Nationwide permits on March 12, 2007 to become effective March 19, 2007, and requested Water Quality Certification (WQC) under Section 401 of the Clean Water Act via letter dated April 4, 2007.

DEQ has determined review of the 2007 Nationwide Permit Program to be concluded, with the reservation that this 401 WQC can be modified as necessary following release of the final Regional Conditions. A list of DEQ water quality certification conditions, both general and activity specific, is contained in the Appendix, attached to and made a part of this 401 WQC. Each activity considered for authorization under the 2007 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.

After review of the Federal action described in the Federal Register, DEQ has either certified, partially certified, or denied certification of each of the Nationwide Permits. *This 401 WQC is contingent on the acceptance by the USACE of the published General Conditions and Regional Conditions and Requirements – both General and Category Specific.* If the USACE modifies or eliminates any of these conditions or requirements from the final Nationwide Permit Program, certification is denied unless DEQ is provided with the opportunity to adequately consider changes for potential impacts to water quality which may warrant modification of this 401 WQC.

On behalf of the State of Oregon, the DEQ has certified, partially certified, or denied certification of the following activities proposed for authorization under the Nationwide Permit Program 2007, as

listed in the following tables. DEQ certifies that there is reasonable assurance that the certified activities will be conducted in a manner that will not violate applicable state water quality standards, including the Antidegradation Policy for Surface Waters in *Oregon Administrative Rule (OAR) 340-041-0004*, and will comply with the applicable sections of the Clean Water Act, provided the conditions in the attached Appendix are incorporated into the permits.

### Certified Nationwide Permits

The following Nationwide Permits are water quality certified subject to all conditions of the Nationwide Permits and specific water quality conditions and criteria contained in the Appendix to this letter of certification.

1	Aids to Navigation
2	Structures in Artificial Canals
3	Maintenance
4	Fish and Wildlife Harvesting, Enhancement , and Attraction Devices and Activities
5	Scientific Measurement Devices
6	Survey Activities
7	Outfall Structures & Associated Intake Structures
14	Linear Transportation Projects
15	US Coast Guard Bridges
18	Minor Discharges
19	Minor Dredging
20	Oil Spill Cleanup
22	Removal of Vessels
23	Approved Categorical Exclusions
25	Structural Discharges
27	Aquatic Habitat Restoration, Establishment, & Enhancement Activities
28	Modifications of Existing Marinas
29	Residential Developments
30	Moist Soil Management for Wildlife
31	Maintenance of Existing Flood Control Facilities
32	Completed Enforcement Actions
33	Temporary Construction, Access and Dewatering
35	Maintenance Dredging of Existing Basins
36	Boat Ramps
37	Emergency Watershed Protection and Rehabilitation
38	Cleanup of Hazardous and Toxic Waste
39	Commercial & Institutional Developments
42	Recreational Facilities

### Partially Certified Nationwide Permits

The specified sections of the following Nationwide Permits are denied water quality certification and must undergo individual review and evaluation for 401 WQC. Applications which do not include the prohibited sections are certified and are subject to all conditions of the Nationwide Permits, and specific water quality conditions and criteria contained in the Appendix to this letter of certification.

12	Utility Line Activities - Utility line substations or permanent access roads impacting waters of the state are denied certification.
13	Bank Stabilization – Projects: 1) in excess of 500 linear feet; or 2) permanently place material in adjacent wetlands; or 3) include new vertical structures or employ toe rock in stream without bioengineering (exceptions specified), are denied certification.
16	Return Water from Contained Upland Disposal Areas – Return water exceeding chronic water quality criteria for toxics are denied certification.
41	Reshaping Existing Drainage Ditches - Projects in excess of 500 linear feet are denied certification.
45	Repair of Uplands Damaged by Discrete Events – Projects which include discharge of dredged or fill material to restore lands is denied.

### Nationwide Permits Denied Certification

The following Nationwide Permits are denied water quality certification in their entirety. Each category was either: reviewed and determined to potentially result in water quality impacts beyond that considered minimal; or not reviewed due to the activity not being likely to occur in Oregon, EPA retaining authority for 401 issuance, or inadequate data and time for DEQ to fully evaluate potential water quality impacts. Applicants proposing projects in these categories must submit project information to undergo a detailed review and all public involvement requirements in order to obtain individual water quality certification for these activities.

8	Oil & Gas Structures on the Outer Continental Shelf
9	Structures in Fleeting and Anchorage Areas
10	Mooring Buoys
11	Temporary Recreation
17	Hydropower Projects
21	Surface Coal Mining Activities
25	Indian Tribe or State Administered Section 404 Program
26	[Reserved]
34	Cranberry Production Activities
40	Agricultural Activities
43	Stormwater Management Facilities
44	Mining Activities
46	Discharges in Ditches
47	Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
48	Existing Commercial Shellfish Aquaculture Activities
49	Coal Remining Activities
50	Underground Coal Mining

Colonel O'Donovan  
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Please direct any questions about this letter to Alexandra Cyril at (503) 229-6030, or by email at [cyril.alex@deq.state.or.us](mailto:cyril.alex@deq.state.or.us). Thank you for your continued cooperation in protecting Oregon's water quality and natural resources.

Sincerely,



Sally Puent,  
Water Quality Manager  
Northwest Region

T:AC.certodon.NWP2007

cc: Jay Charland, DLCD  
Marc Liverman, NMFS  
Yvonne Vallette, EPA  
John Marshall, USFWS  
Patty Snow, ODFW  
Kevin Moynahan, DSL  
Kevin Herkamp, DSL  
Kathy Lehtola, Wash Co  
Douglas Quirk, OR Clean Water Action Project

# Appendix

## General Conditions

**In addition to all USACE permit conditions, the following 401 WQC conditions apply to all NWP categories certified or partially certified by this 401 WQC, unless specified in the condition. Additional 401 WQC Category Specific Conditions follow, which must also be complied with as applicable.**

- 1) **Turbidity:** All practical Best Management Practices (BMPs) on disturbed banks and within the stream shall be implemented to minimize turbidity during in-water work. OAR 340-041-0036 states that turbidity shall not exceed 10% above natural stream turbidities, except where allowed by the rule. This rule also states that limited duration activities necessary to accommodate essential dredging, construction or other legitimate activities and which cause the turbidity standard to be exceeded may be authorized provided all practical turbidity control techniques have been applied and a section 401 water quality certificate has been granted.
  - a. **Monitoring:** Turbidity monitoring shall be conducted and recorded as described below. Monitoring shall occur each day during daylight hours when in-water work is being conducted. A properly and regularly calibrated turbidimeter is recommended, however, visual gauging is acceptable.
    - i. Representative Background Point: a sample or observation must be taken every four hours at a relatively undisturbed area approximately 100 feet upcurrent from in-water disturbance to establish background turbidity levels for each monitoring cycle. Background turbidity, location, and time must be recorded prior to monitoring downcurrent.
    - ii. Compliance Point: Monitoring shall occur every four hours approximately 100 feet down current from the point of discharge and be compared against the background measurement or observation. The turbidity, location, and time must be recorded for each sample.
  - b. **Compliance:** Results from the compliance points should be compared to the background levels taken during each monitoring interval. Exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 <sup>ST</sup> MONITORING INTERVAL	ACTION REQUIRED AT 2 <sup>ND</sup> 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 BMPs & continue to monitor every 4 hours	Stop work after 8 hours at 5-29 NTU above background
30 to 49 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 2 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	Modify BMPs & continue to monitor every 4 hours	Stop work after 8 hours with an observed plume

*When monitoring visually, turbidity that is visible over background is considered an exceedance of the standard.*

*If an exceedance over the background level occurs, the applicant must modify the activity and continue to monitor every four hours or as appropriate (above). If an exceedance over the background level continues after the second monitoring interval, the activity must stop until the turbidity levels return to background. If, however, turbidity levels return to background at second monitoring level due to implementation of BMPs or natural attenuation, work make continue with appropriate monitoring as above.*

*If an exceedance occurs at: 50 NTU or more over background; 30 NTU over background for 2 hours; or 5-29 NTU over back ground for 8 hours, the activity must stop immediately for the remainder of that 24-hour period.*

- c. **Reporting:** Copies of daily logs for turbidity monitoring shall be available to DEQ, USACE, NMFS, USFWS, and ODFW upon request. The log must include: background NTUs, compliance point NTUs, comparison of the points in NTUs, and location, time, and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions.
- d. **BMPs to Minimize In-stream Turbidity:**
  - i. Sequence/Phasing of work – The applicant will 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 shall 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 by using a closed-lipped environmental bucket shall be implemented;
  - iii. Limit the number and location of stream crossing events. Establish temporary crossing sites as necessary at the least impacting areas and supplement with clean gravel or other temporary methods as appropriate;
  - iv. Machinery will not drive into the flowing channel;
  - v. Excavated material will 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; and,
  - vi. Use of containment measures such as silt curtains, geotextile fabric, and silt fence will be implemented and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

- 2) **Erosion Control:** The applicant is referred to DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005. The following erosion control measures (and others as appropriate) or comparable measures as specified in an NPDES 1200-C permit (if required) shall be implemented during construction/project activities:

- a. Filter bags, sediment traps or catch basins, vegetative strips, berms, Jersey barriers, fiber blankets, bonded fiber matrices, geotextiles, mulches, wattles, sediment fences, or other measures used in combination shall be used to prevent movement of soil from uplands into waterways or wetlands;
- b. An adequate supply of materials needed to control erosion must be maintained at the project construction site;
- c. To prevent stockpile erosion, use compost berms, impervious materials or other equally effective methods, during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;
- d. Erosion control measures shall be inspected and maintained daily, or more frequently as necessary, to ensure their continued effectiveness and shall remain in place until all exposed soil is stabilized;
  - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary.
  - ii. Remove sediment from erosion and sediment controls once it has reached 1/3 of the exposed height of the control.
- e. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas shall use removable pads, mats, or other methods as necessary to prevent soil compaction, unless doing so would be more impactful to these or surrounding resources.
- f. Flag or fence off avoided wetlands and newly planted areas to protect from disturbance and/or erosion.
- g. Dredged or other excavated material shall be placed on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
- h. Sediment from disturbed areas or in any way able to be tracked by vehicles onto pavement shall not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state and impair water quality. Placement of clean aggregate at all construction entrances, and other BMPs such as truck or wheel washes if needed, will be used when earthmoving equipment will be leaving the site and traveling on paved surfaces; and,
- i. Projects which disturb one acre or more require an NPDES 1200C Storm Water Discharge Permit. Contact the appropriate DEQ regional office for more information (Contact information can be found at: <http://www.deq.state.or.us/wq/>).

3) **Post-Construction Stormwater Management for NWP activities involving impervious surfaces (NWPs 3, 14, 15, 29, 36, 39, 42)**

Stormwater discharges to waters of the state must not violate state water quality standards, including Oregon Administrative Rule (OAR) 340-041-0004, the Antidegradation Policy for Surface Water. There is a reasonable expectation that runoff from impervious surfaces will carry pollutants toward the lowest point in the landscape, which is generally a water of the state. Low Impact Development (LID) techniques to reduce amounts and concentrations of runoff leaving the project area and Best Management Practices (BMPs) targeting removal of reasonably expected pollutants (sediment, metals, hydrocarbons, nutrients, pesticides, etc.) prior to discharge of stormwater must be incorporated into project designs. A narrative and site sketch describing these LID techniques, BMPs and other stormwater

treatment options commensurate with the scale of the project will constitute a post-construction stormwater management plan which must be submitted by the applicant to DEQ for review and approval prior to construction. DEQ's *Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications Which Involve Impervious Surfaces* (located under "Removal/Fill" at: <http://www.deq.state.or.us/wq/sec401cert/sec401cert.htm>) provides information to determine the level of detail required for the plan based on project type, scope, location, and other factors, as well as references to assist in designing the plan. Submission of the plan must include:

- a. A site sketch or plan view drawing indicating: the drainage flow directions; discharge locations; contours and spot elevations; location and size of impervious features (e.g., parking lots, driveways, buildings, or roads); nearest downgradient waterbody with direction of stream and surface flow, other physical features of the site, and the location and type of post-construction BMPs;
- b. A narrative description of proposed BMPs and a summary of their anticipated operation to insure adequate capacity, proper function, and appropriate design for the site such that quality, quantity, and seasonality of pre-construction hydrologic conditions are mimicked to the maximum extent practicable, based on stormwater anticipated to be generated due to project-related impervious surfaces and delivered to waters of the state. See local jurisdiction regulations and accepted stormwater manuals for detention and capacity requirements;
- c. Implementation of the plan must be concurrent with installation of impervious surfaces and include an adequate operation and maintenance plan with documentation of responsibility for maintenance by a qualified entity;
- d. If engineered structural BMPs are incorporated into the post construction stormwater management plan they must be prepared and stamped by an Oregon registered Professional Engineer (PE), and specification drawings must be submitted; or
- e. In lieu of a complete 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 stormwater management practices.

4) **Deleterious Materials:** The following conditions relating to control of hazardous, toxic and waste materials shall be observed:

- a. **Treated Wood: Ineligibility-** Projects which propose installation of chemically treated wood that will contact surface or ground water or that will be placed over water where it will be exposed to abrasion require individual, site specific review and are, therefore, **not certified by this 401 WQC.**
- b. Projects that require removal of chemically treated wood must:
  - i. Ensure that no treated wood debris falls into waters of the State. If treated wood debris falls into waters of the State, it must be removed immediately and disposed of properly.



- ii. Dispose of all treated wood debris removed during a project, including treated wood pilings, at an upland facility approved for hazardous materials of this classification. Do not leave treated wood pile(s) in the water or stacked on the streambank.
  - iii. Immediately place removed piling onto an appropriate dry storage site.
  - iv. Attempt to remove the entire temporary or permanent piling.
  - v. If complete removal is not possible, ensure that any treated wood piling to remain submerged is broken, cut, or pushed at least 3 feet below the sediment surface.
  - vi. Fill and cover holes left by each treated timber piling removed with clean, native substrates that match surrounding streambed materials. If chemically treated wood piles are removed using a vibratory hammer, ensure that holes are capped with clean fill as the pile is removed. Surrounding the pile with clean material prior to removal will allow the hole to fill in upon extraction in order to contain any undecomposed chemicals which have pooled beneath the substrate and may tend to escape upon extraction of the pile as they are less dense than the surrounding water. Clean fill must be accounted for in project description and threshold limits.
- c. Biologically harmful materials and construction debris including, but 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 shall not be placed in waterways or wetlands. Authorized fill material must be free of these materials. The applicant must remove all foreign materials, refuse, and waste from the project area.
  - d. An adequate supply of materials needed to contain deleterious materials during a weather event must be maintained at the project site and deployed as necessary.
  - e. Machinery refueling shall not occur in waterways, wetlands, or riparian areas.

5) **Spill Prevention:** Fuel, operate, maintain, and store vehicles and construction materials in areas that minimize disturbance to habitat and prevent adverse effects from potential fuel spills.

- a. Complete vehicle staging, cleaning, maintenance, refueling, and fuel storage in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance can be made if all practicable prevention and containment measures [as in 5) b through e below, or others] are employed and this distance is not possible because of any of the following site conditions:
  - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
  - ii. Natural resource features would be degraded as a result of this setback, or,
  - iii. Either no contaminants are present or full containment of potential contaminants to prevent soil and water contamination is provided;
- b. Inspect all vehicles operated within 150 feet of any waters of the State daily for fluid leaks before leaving the vehicle staging area. Repair any leaks detected in the vehicle staging area before the vehicle resumes operation;
- c. Before operations begin and as often as necessary during operation, steam

clean (or an approved equal) all equipment that will be used below bankfull elevation until all visible external oil, grease, mud, and other visible contaminants are removed;

- d. Diaper all stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state; and,
- e. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed contain spills must be maintained at the project construction site and deployed as necessary.

6) **Spill & Incident Reporting:**

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

7) **Vegetation Protection and Restoration:** Riparian, wetland, and shoreline vegetation in the authorized project area shall be protected from unnecessary disturbance to the maximum extent practicable through:

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

If authorized work results in unavoidable vegetative disturbance; riparian, wetland, and shoreline vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved, at the completion of the authorized work.

8) **Project Thresholds:**

- a. Project applications must be complete and account for total impacts at build-out regardless of construction phasing. Projects may not be phased to avoid exceeding USACE or DEQ imposed threshold limitations of wetland impact or cubic yards of material removal or fill; and,
- b. Impacts to wetlands and waters of the state for a project are additive relative to the thresholds for eligibility.

9) DEQ is to have site access upon reasonable request.

10) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application materials.

- 11) A copy of this WQC letter shall be kept on the job site and readily available for reference by the USACE, DEQ personnel, the contractor, and other appropriate state and local government inspectors.
- 12) DEQ reserves the option to modify, amend or revoke this WQC, as necessary, in the event new information indicates that the project activities are having a significant adverse impact on State water quality or critical fish resources.

### **Activity Specific Conditions**

**In addition to all conditions of the USACE permit and the 401 WQC General Conditions above, the following conditions apply to specific categories of authorized activities.**

**NWP 12 – Utility Lines:** This WQC does not authorize the construction of substations or permanent access roads for utility lines in waters of the state including wetlands.

1. All stream permanent or temporary crossings must be made perpendicular to the bankline, or nearly so, and at the narrowest, or least sensitive, portion of the wetland or riparian corridor.
2. Directionally bored stream crossings:
  - a. Drilling Discharge- All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, will 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 unavoidably 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. Prior to cleanup, plans must be submitted and approved by the regulatory agencies;
  - c. When drilling is completed, attempts will be made to remove the remaining drilling fluid from the sleeve (e.g., by pumping) to reduce turbidity when the sleeve is removed; and,
  - d. An adequate supply of materials needed to control erosion and/or to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
3. Utility lines through wetlands must be fitted with trench plugs to avoid dewatering wetlands.

**NWP 13 – Bank Stabilization:**

1. **Ineligibility:** The following streambank stabilization activities require individual 401 WQC or additional conditions approved by DEQ.
  - a. Bank stabilization projects in excess of 500 feet.
  - b. Permanent placement of material in wetlands adjacent to a stabilization project.
  - c. Placement of new vertical structures such as retaining walls, bulkheads, gabions or similar structures; or placement of rock in constructed stream channel trenches where bioengineering is not a feature of the project, with the following exceptions:

- i. Rock as ballast to anchor or stabilize large woody debris components of an approved bank treatment.
- ii. Rock to fill scour holes, as necessary to protect the integrity of the stabilization project, if the rock is limited to the depth of the scour hole and does not extend above the channel bed.
- iii. Rock to construct a footing, facing, head wall, or other protection necessary to prevent scouring or downcutting of, or slope erosion or failure at, an existing structure (e.g., culvert, utility line, roadway or bridge support) to be repaired.
- iv. Rock or vertical structures in projects maintaining existing transportation related structures when a registered professional engineer identifies these as the only effective method due to site specific geotechnical or hydraulic concerns.

For projects meeting eligibility or an exception as listed above (in 1. i. through iv.), the applicant shall:

2. Identify potential adverse impacts of bank stabilization on water quality parameters and beneficial uses both upstream and downstream of the activity site, and show how these have been avoided, minimized or mitigated.
3. Provide site design and construction features that avoid, then minimize, then mitigate for the adverse impacts of bank stabilization. Appropriate design features include use of biodegradable project materials, riparian vegetation, and woody debris.
4. When rock is necessary, it must be appropriately sized for stability, clean, durable, angular, and include interstitial plantings unless the permittee can demonstrate that such plantings are not practicable.
5. Provide mitigation approved by DEQ for lost or reduced water quality function.

**NWP 16 - Return Water from Contained Upland Disposal Areas:** Return water from material known to contain contaminants in dissolved form at levels which exceed chronic water quality criteria (OAR 340-041-0033, Tables 20, 33A, and 33B, see:

<http://www.deq.state.or.us/regulations/rules.htm>) are **not certified under this 401 WQC.**

1. For all materials removed from wetlands and waterways during authorized activities which has been determined to be suitable for in-water disposal, all practicable efforts to return to waters or beneficially reuse all excess material shall be undertaken prior to disposing in upland areas.
2. Upland disposal of materials must conform to existing DEQ solid waste and contaminant requirements which include an appropriately located and designed confined disposal facility and implementation of all practicable measures to prevent material discharge and uncontrolled return water discharge to waterways and wetlands.
3. Upland disposal facilities must receive a DEQ Solid Waste Letter of Authorization or written notice of exemption prior to disposal taking place there. Contact DEQ Land Quality in the regional office covering project area (800-452-4011).

**NWP 33 – Temporary Construction, Access, and Dewatering:** Refer to Appendix D of DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, for proper dewatering and work area isolation techniques. Minimize general disturbance to existing vegetation and water quality by:

1. Using low impact equipment (e.g., spider hoe, crane);

2. Using existing roadways, travel paths, and drilling pads;
3. Clearing vegetation which must be removed only to ground level (no grubbing);
4. Placing clean gravel over geotextile fabric for access ways;
5. Minimizing the number of temporary stream crossings and locating them in the least impactful areas;
6. Constructing temporary crossings of riparian areas and streams at right angles to the main channel;
7. Obliterating all temporary access roads that will not be incorporated into the permanent structure and restoring those areas;
8. Stabilizing any exposed soil; and,
9. Revegetating the site.

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

1. Dewatering of toxic material dredged from in-stream shall not occur over un-isolated waters of the state. Containment of toxics laden return water must be provided such that proper disposal or adequate treatment prior to controlled release back to waters of the state may be accomplished.
2. Upland disposal facilities must receive a DEQ Solid Waste Letter of Authorization or written notice of exemption prior to disposal taking place there. Contact DEQ Land Quality in the regional office covering project area (800-452-4011).

**NWP 41 - Reshaping Existing Drainage Ditches:** The linear threshold for reshaping drainage ditches under any NWP is 500 feet. **All projects exceeding the 500 feet threshold require individual 401 WQC or additional conditions approved by DEQ.** For projects within the 500 feet threshold, the applicant shall:

1. Work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;
2. Preserve the existing vegetation to the maximum extent practicable;
3. Establish in-stream and riparian vegetation on reshaped channels and side channels wherever practicable. Such plantings shall be targeted to address water quality parameters (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.