

PORTLAND DISTRICT 2007 NATIONWIDE PERMIT Qs & As

REGIONAL REQUIREMENTS:

Q1. What is the purpose of the Regional Requirements?

A1. The purpose of the Regional Requirements is to tell applicants when pre-construction notification (PCN) to the Portland District is required for certain nationwides and to guide applicants and consultants to submit better information with their notifications.

Q2. Is the Sediment Evaluation Framework (SEF) level 1 information required for a PCN to be complete (the application itself, not for finalizing) for NWP 3 and 35? It appears so. Why was this not included for NWP 19 and 31?

A2. The information identified in the Portland District Regional Requirements is not necessary for a complete application unless required by the activity specific Nationwide Permits or General Condition 27 (March 12, 2007 Federal Register). The SEF level 1 information may be requested for any activity where the Corps has reason to believe contaminants may be present at the project site. Nationwide permits are not automatically required to go through the SEF review process unless located within a Superfund site.

Q3. The Regional Requirements for NWP 3, 29, 39, and 42 require a stormwater management plan (SWMP) to be provided to the Corps and approved by DEQ for all authorized activities which involve new impervious surfaces. What will be the process for ensuring compliance with this requirement? How will obtaining the requisite approved SWMP fit into permit evaluation timelines?

A3. The SWMP is not required for an application to be complete, but may be necessary to finalize the review process. If the Corps is lacking the SWMP but is otherwise ready to finalize, the Project Manager should go ahead and issue the final verification letter. The Corps does not need an 'approved' SWMP to issue the NWP verification. Approval by DEQ of the SWMP prior to construction is a requirement of the DEQ Water Quality Certification.

Q4. If a SWMP is not provided, will the Corps issue a provisional permit? Condition the permit? Add an advisory statement saying the WQC is not valid until DEQ approves the plan?

A4. As stated in A2, the DEQ Water Quality Certification requires approval (by DEQ) of the SWMP prior to construction. If the Corps does not receive the SWMP, or the SWMP is not approved at the time the Corps is ready to issue final verification, we may proceed. There is no need to issue a provisional permit nor add a special condition that requires approval of the SWMP. An advisory note will be contained in the verification letter

reminding the applicant of the requirement to obtain DEQ approval of the SWMP prior to project construction. Project Manager's are also encouraged to notify the applicants of this requirement early in the review process.

REGIONAL CONDITIONS:

Q1. How are high value wetlands defined? Are these wetlands that are not degraded and are intact or does Regional Condition 1 apply to all of the listed wetland types no matter what condition they are in?

A1. If a wetland system has all the attributes such that it can be identified as one of the listed high value aquatic resources, then Regional Condition 1 applies to that wetland system.

Q2. What is the basis for the definition of a Willamette Valley wet prairie? (Regional Condition 1)

A2. The definition for Willamette Valley wet prairie is based on a search of the literature and consultation with local experts.

Q3. Regional Condition 2 does not provide an allowance for modification or extension.

A3. The in-water work provision may be modified following coordination with the appropriate agency or agencies as the Corps has done in the past.

Q4. How does the Corps apply the in-water work window requirement?

A4. a) The in-water work window applies to all portions of the construction activity occurring in the waterway below the ordinary high water mark (or mean high water) not just those we are asserting jurisdiction over. For example, if in the process of doing bank stabilization the permittee is placing sheet pile to isolate the work site, the installation of the sheet pile must occur during the in-water work window.

b) If the Corps is not using the in-water work window for activities below ordinary high water (or mean high water), documented approval from ODFW and/or NMFS must be in the file. Such documentation is required even if the work is to occur in the dry.

c) Project Managers may not apply the in-water work window restrictions to wetlands occurring landward of the OHW mark (or mean high water) unless ODFW and/or NMFS believe work in those areas will impact aquatic resources within the adjacent waterway. If in-water work windows are being applied to such areas, the work restrictions must be added as a special condition of the verification letter and the reasons for the addition identified within the decision document.

Q5. Do the nationwide specific Regional Conditions need to be referenced if they do not apply?

A5. No. The nationwide specific Regional Conditions do not need to be added unless applicable.

Q6. The activity specific condition for NWP 6 (Survey Activities) says conducted in the dry. Does this mean drilling within the active channel bottom is not allowed anymore?

A6. The requirement is that *exploratory trenching* (as specifically defined in Nationwide Permit 6) occurs in the dry. Other activities, such as core sampling and drilling, may occur within the active flowing stream.

Q7. In the activity specific conditions for NWP 39 and 42, Condition 2 prohibits discharges into open water while Condition 1 authorizes limited fill into “tributaries regulated as waters of the U.S”. As defined in the federal register, open water includes any flowing water with an OHW, not just ponded areas. Therefore, conditions 1 and 2 contradict each other and severely limit the use of this NWP. Is this really what was intended?

A7. Activity Specific Condition 2 is intended to prohibit fill into lakes or ponds (in whole or in part) for the purposes authorized by NWPs 39 and 42.

DEQ WATER QUALITY CERTIFICATION:

Q1. In Condition 1.d.iv – is there an allowance for forging the stream when this would result in the least environmental impact?

A1. No. There is no built in allowance for making a change to this condition. Any requests for changes should be made by the Permittee to DEQ. If DEQ agrees to a change in this condition that would allow use of the blanket certification, the permittee should provide written documentation of such agreement to the Corps Project Manager.

Q2. NWP 16: how will it be determined if the return water exceeds water quality criteria? Will elutriate testing be required as part of the SEF review, in addition to the testing the sediment?

A2. DEQ intended the normal SEF review process to be the means for determining whether return water would exceed chronic water quality criteria.

Q3. In general, is the onus on the applicant or the Corps to determine if the project satisfies the WQC conditions? For example, NWP 13 – identify beneficial uses both upstream and downstream of the activity site, mitigate for adverse impacts of bank stabilization, etc.

A3. The onus is on the applicant to ensure they are in compliance with the Water Quality Certification conditions and to work with DEQ where specific approvals or reviews are required by that agency. Corps Project Managers do, however, need to ensure NWP

verifications with 401 certification are not issued where full or partial denials are in place (for example, utility line substations or bank stabilization projects in excess of 500 feet).

Q4. DEQ issued water quality certification for several NWP's that are Section 10 only activities (e.g. NWP 1, 2, 28, and 35). Similarly, DEQ denied certification for several Section 10 only NWP's (e.g. 8, 9, 10, and 11). Will the Corps attach water quality certification conditions to those Section 10 only NWP's issued certification?

Alternatively, will the Corps issue provisional verification letters and require individual water quality certification review for those Section 10 only NWP's denied certification?

A4. No. Water quality certification will not be attached to Section 10 only nationwide permit verification letters nor will the Corps issue provisional 401 verification letters where DEQ has denied certification for Section 10 only NWP's.

EPA WATER QUALITY CERTIFICATION:

Q1. The EPA certification applies to Tribal lands and lands with exclusive federal jurisdiction within the state of Oregon. What is the definition of Tribal lands? Does it include land outside reservation boundaries?

A1. Tribal lands for the purposes of EPA certification are limited to reservation boundaries.

DLCD COASTAL ZONE CONCURRENCE:

Q1. Condition 4. In-water Work: a) exceptions to the window need written approval from ODFW. What if the Corps is not using the in-water work window? Or is this no longer an option? b) does the second part apply to all fish, not just ESA listed fish?

A1. See Regional Condition Question 4 for appropriate use of the in-water work window restriction. It is the Corps' understanding that Part 1 of the above CZM concurrence condition is simply meant to document the normal coordination process for modifications to in-water work window requirements. Condition 4 part 2 applies to all fish. Recommend Project Managers contact the local ODFW biologist to determine if this portion of Condition 4 is applicable.

Q2. Condition 9. Aquaculture: Is the onus to obtain proof of authorization from the Oregon Department of Agriculture on the permittee and not required in order to use the Coastal Zone Concurrence (i.e. no need for a provisional)?

A2. Yes, the onus is on the permittee to comply with the requirements of Condition 9. Proof of authorization from ODA is not required before issuing the final verification under NWP 48.

NWP SPECIFIC QUESTIONS:

Q1. NWP 35 authorizes the removal of accumulated sediments from marina basins, boat slips and access channels to marinas and boat slips. Is the use of NWP 35 specifically restricted to the listed features or could it be used to remove sediments from boat ramps?

A1. The use of NWP 35 is limited to maintenance dredging within the listed features and may not be expanded to include boat ramps. Removal of sediments from boat ramps can be authorized under NWP 19 (Minor Dredging) provided it meets the quantity limitations, or under NWP 3 (Maintenance). If authorized under NWP 3, the dredge footprint should be limited to the area near the boat ramp so the work is not construed as being done for navigation purposes.