



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Northwest Region
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5263
FAX (503) 229-6945
TTY 711

December 10, 2025

Colonel Larry Caswell, Jr., Portland District Commander
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, Oregon 97208-2946

RE: Denial: Intent to issue individual expedited 401 Water Quality Certifications (WQCs) for the 2026 U.S. Army Corps of Engineers (USACE) Nationwide Permit Program Directly to Applicants

Background: On June 18, 2025, the USACE published a notice in the Federal Register (90 FR 26100) to reissue 56 existing Nationwide Permit categories, issue of one new Nationwide Permit category, general conditions and definitions, and modifications. On June 18, 2025, the Portland District USACE issued a public notice to solicit comments on the proposed regional conditions for the 2026 Nationwide Permits.

Oregon Department of Environmental Quality (DEQ) issued a 35-day public notice of this letter of intent and draft Nationwide 401 WQC from August 26, 2025, to September 30, 2025.

Applicable Water Quality Regulations and DEQ Evaluations: DEQ is the agency in the State of Oregon designated by the Oregon Legislature to carry out the certification functions prescribed by Section 401 of the Clean Water Act (CWA). In Oregon, statutory authority for Section 401 WQCs is contained in the Oregon Revised Statutes (ORS) Chapter 468B. Oregon Administrative Rules (OAR Chapter 340, Division 48) prescribe the procedures for processing Section 401 WQC applications. Oregon's water quality standards are contained in OAR Chapter 340, Division 41 entitled "Water Quality Standards: Beneficial Uses, Policies, and Criteria for Oregon." The requirements and standards set forth in Division 41 were adopted to comply with the 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 certain 2026 Nationwide Permit categories authorized under Section 404 of the CWA include activities that may result in a discharge to waters of the state and are subject to the certification requirements of Section 401.

Status of Affected Waters: Activities proposed as part of the Nationwide Permits 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 three Outstanding Resource Waters: North Fork Smith River (OAR 340-041-0004(8)), Waldo Lake (OAR 340-041-0345(7)), and Crater Lake (OAR 340-041-0185(6)). 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). 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.

Beneficial Uses: Both Oregon law and the federal CWA 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: <https://www.oregon.gov/deq/wq/Pages/WQ-Standards-Uses.aspx>. In general, it is assumed that achieving a water quality criteria that fully protects the most sensitive beneficial use, fully protects all beneficial uses.

Potential Modification of Waters of the State and Antidegradation Evaluation: In consideration of the activities proposed for authorization under the USACE 2026 Nationwide Permit package, DEQ has determined that impacts to waters of the state could be reasonably expected to occur.

The proposed 401 WQC decisions addressed in this document apply to activities that DEQ has determined could result in water quality and beneficial use impacts. Some activities must be evaluated separately in order to provide conditions or denial of certification protective of water quality.

Since 2017, DEQ has implemented an expedited review process for projects which fit under the thresholds of the Nationwide Permits, with exceptions noted below. Projects that exceed these thresholds will undergo a standard 401 WQC review.

Evaluation of Other Water Quality Related Requirements of State Law: In consideration of state law with direct 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 USACE 2026 Nationwide Permit, DEQ has identified the following 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." Many of Oregon's Statewide Planning Goals have direct references to water quality.
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.

Issuance of a 401 WQC 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.

Evaluation of Compliance with Clean Water Act Sections 301, 302, 303, 306, and 307: Sections 301, 302, 306, and 307 of the federal CWA establish the framework for 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 (NPDES) permits issued to the point sources. Activities authorized under USACE Nationwide Permit categories must also apply for, obtain, and implement all required NPDES permits.

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

Certification Decision: DEQ denies the USACE's request for a general certification of the 2026 Nationwide Permits. DEQ will, however, offer an expedited 401 WQC review process much like has been done since the 2017 Nationwide Permits. DEQ will evaluate projects that require a pre-construction notification to the USACE for a Nationwide Permit and will issue an individual expedited 401 WQC to the applicant following review of the project application and payment of the fee. If an application or pre-construction notification is required to be submitted to the USACE, the applicant must obtain a 401 WQC, unless the category is one for which no certification is requested per Table 2 below. Projects authorized under Section 10 only typically do not require a 401 WQC, unless the project is located within Portland Harbor.

Each activity considered for expedited 401 WQC reviews under the 2026 Nationwide Permit Program in Oregon must comply with the applicable conditions and criteria that are included in the certification template, as part of the expedited 401 WQC package. If DEQ finds these conditions insufficient to

ensure compliance with water quality standards and programs of any permit, license, or project, DEQ may cease use of the expedited template 401 WQC and use its standard certification process.

Nationwide Permit Categories and associated requirements: Table 2 lists the Nationwide Permit categories and associated requirements. Some categories will qualify for an expedited 401 WQC upon application to the USACE and DEQ, submittal of the Land Use Compatibility Statement, and payment to DEQ, and some require an application for a standard 401 WQC. Additionally, Table 2 lists Nationwide Permit categories that do not require a state 401 WQC according to 33 CFR 330.4(c)(3) footnote 1 or because no pre-construction notification or application is filed with the USACE.

For all projects with a 404 discharge that qualify for a Nationwide Permit, certification is denied.

Specific water quality requirements with which the discharges will not comply:

- 468B.025 Prohibited activities. (1) Except as provided in ORS 468B.050 or 468B.053, no person shall: (a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.
- Section 401 CWA "...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title."

Statement explaining why the discharges will not comply with the identified water quality requirements:

- DEQ does not have project-specific information, including the location of the discharge or the nature of the discharge. Without this information, DEQ cannot determine that the project will comply with applicable water quality requirements.
 - DEQ cannot identify specific waterways impacted by the project including wetlands and tributary streams.
 - DEQ cannot confirm the status of waterways impacted by the project.
 - DEQ cannot identify the potential for impact to each water quality parameter.
 - DEQ cannot evaluate potential water quality standard violations or contributions to violations.

TABLE 2: Expedited 401 WATER QUALITY CERTIFICATION REQUIREMENTS BY CATEGORY		
Application refers to a Joint Permit Application (JPA), an Application for Department of the Army Permit, or a Pre-Construction Notification (PCN)		
#	CATEGORY	REQUIREMENTS
1	Aids to Navigation	No 401 WQC requested.
2	Structures in Artificial Canals	No 401 WQC requested.
3	Maintenance	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.

5	Scientific Measurement Devices	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
6	Survey Activities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
7	Outfall Structures and Associated Intake Structures	Standard 401 WQC application required for outfalls that are: <ul style="list-style-type: none"> 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. <p>For all other projects, if application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.</p>
8	Oil and Gas Structures on the Outer Continental Shelf	No 401 WQC requested.
9	Structures in Fleeting and Anchorage Areas	No 401 WQC requested.
10	Mooring Buoys	No 401 WQC requested.
11	Temporary Recreational Structures	No 401 WQC requested.
12	Oil or Natural Gas Pipeline Activities	Standard 401 WQC application required.
13	Bank Stabilization	Standard 401 WQC application required for projects that: <ul style="list-style-type: none"> 1) Do <i>not</i> include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions as the <i>only</i> way to protect an <i>existing</i> structure) <p>For all other projects, if application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.</p>
14	Linear Transportation Projects	If application filed for Nationwide coverage through the USACE, 401 WQC required; in that case, expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.

15	U.S. Coast Guard Approved Bridges	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
16	Return Water from Upland Contained Disposal Areas	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
17	Hydropower Projects	Standard 401 WQC application required.
18	Minor Discharges	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
19	Minor Dredging	No 401 WQC requested.
20	Response Operations for Oil and Hazardous Substances	Standard 401 WQC application required for projects with a loss of streambed greater than 300 linear feet. For all other projects, expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
21	Surface Coal Mining Activities	Standard 401 WQC application required.
22	Removal of Vessels	If application filed for Nationwide coverage through the USACE, 401 is WQC required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
23	Approved Categorical Exclusions	Standard 401 WQC application required.
24	Indian Tribe or State Administered Section 404 Program	No 401 WQC requested.
25	Structural Discharges	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
26	[Reserved]	
27	Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
28	Modifications of Existing Marinas	No 401 WQC requested.
29	Residential Developments	Standard 401 WQC application required for projects that create or replace 5,000 SF or more of impervious surface area, and/or if loss of streambed is greater than 300 linear feet.

		For all other projects, expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
30	Moist Soil Management for Wildlife	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
31	Maintenance of Existing Flood Control Facilities	Standard 401 WQC application required for projects in streams with Temperature TMDLs that propose vegetation removal. For all other projects, expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
32	Completed Enforcement Actions	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
33	Temporary Construction, Access, and Dewatering	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
34	Cranberry Production Activities	Standard 401 WQC application required.
35	Maintenance Dredging of Existing Basins	No 401 WQC requested.
36	Boat Ramps	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
37	Emergency Watershed Protection and Rehabilitation	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
38	Cleanup of Hazardous and Toxic Waste	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
39	Commercial and Industrial Developments	Standard 401 WQC application required for projects that create or replace 5,000 SF or more of impervious surface area, and/or if loss of streambed is greater than 300 linear feet.

		For all other projects, expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
40	Agricultural Activities	Standard 401 WQC application required.
41	Reshaping Existing Drainage and Irrigation Ditches	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
42	Recreational Facilities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
43	Stormwater Management Facilities	Standard 401 WQC application required for projects that: <ol style="list-style-type: none"> 1. Propose stormwater facilities in-stream or wetland; or 2. Are not subject to an NPDES permit. For all other projects, if application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
44	Mining Activities	Standard 401 WQC application required for projects that do <i>not</i> obtain an NPDES 700-PM or an Individual permit. <p>For all other projects, if application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.</p>
45	Repair of Uplands Damaged by Discrete Events	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
46	Discharges in Ditches	Standard 401 WQC application required.
47	[Reserved]	
48	Commercial Shellfish Mariculture Activities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
49	Coal Remining Activities	Standard 401 WQC application required.
50	Underground Coal Mining Activities	Standard 401 WQC application required.

51	Land-Base Renewable Energy Generation Facilities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
52	Water-Based Renewable Energy Generation Pilot Projects	Standard 401 WQC application required.
53	Removal of Low-Head Dams	Standard 401 WQC application required for projects that: 1) Do <i>not</i> go through a PSET review if sediments are to be dispersed in-water. For all other projects, if application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
54	Living Shorelines	Standard 401 WQC will be required for projects that: 1) Do <i>not</i> include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions as the <i>only</i> way to protect an <i>existing</i> structure). For all other projects, expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
55	Seaweed Mariculture Activities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.
56	[Reserved]	
57	Electric Utility Line and Telecommunications Activities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
58	Utility Line Activities for Water and Other Substances	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. Specific conditions in the expedited WQC apply.
59	Water Reclamation and Reuse Facilities	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon

		review and payment. General conditions are appropriate.
60	Activities to Improve Passage of Fish and Other Aquatic Organisms	If application filed for Nationwide coverage through the USACE, 401 WQC is required; expedited 401 WQC will be granted upon review and payment. General conditions are appropriate.

**Projects authorized under Section 10 only typically do not require a 401 WQC, unless the project is located within Portland Harbor.*

Please direct any questions about this 2026 Nationwide Permit 401 WQC letter of intent to Delia Negru, DEQ 401 Water Quality Certification Specialist, at (503) 593-2493, or by email at delia.negru@deq.oregon.gov. Thank you for your continued cooperation in protecting Oregon’s water quality and natural resources.

Sincerely,



Theresa Burcsu,
Water Quality Manager
Northwest Region

ec: Bill Abadie, USACE
Joe Brock, USACE
Lisa Phipps, DLCD
Joy Lovett, ODFW