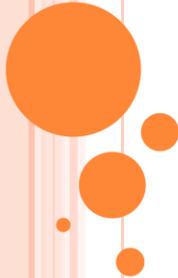


2012 NATIONWIDE PERMITS

STATE 401 WATER QUALITY
CERTIFICATION

&

COASTAL ZONE MANAGEMENT
DETERMINATION
DECISIONS



Federal Permit Unit
ecyrefedpermits@ecy.wa.gov
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OVERVIEW

- Section 401 of the federal Clean Water Act
 - State reviews proposed federal permit or license decision
 - State certifies that there is “reasonable assurance” that state water quality standards will be met

- Coastal Zone Management Act
 - State reviews proposed federal actions to determine consistency with the state Coastal Zone Management Program’s enforceable policies
 - Applies to actions in Washington’s 15 coastal counties



CHANGES FROM 2007 NWP PROGRAM

- Updated State General Conditions
 - Clarified language
 - Added one new condition
- Updated specific NWP conditions
 - Clarified and revised conditions
 - New conditions to address concerns
 - Major change in state review
- Changes to Section 10-only NWPs

Overview of Ecology's program review process:

Ecology participated in state and federal multi-agency workgroup prior to issuance of final Federal Register notice. After the Seattle District finalized regional conditions, Ecology staff held workgroup meetings to discuss what was/wasn't working in the 2007 program, what are our challenges and concerns with impacts to resources, where are the gaps in the national and regional conditions. Ecology also issued two public notices, reaching out to the public, other state agencies and NWIFC/tribes to provide comments. Incorporated comments in the workgroup discussions.

State general conditions: APPENDIX B of Users Guide

- updated language in each condition to clarify intent and when applicable
- Pulled a recurring condition for stormwater prevention/controls to create new State General Condition 7

Updates to NWP specific conditions

- Based on staff discussions and public comments, conditions were clarified, revised, or new conditions were developed
- Major changes in how a few nationwide permits are reviewed by the state—Nationwide Permit 13, 43, 38

Changes to Section 10-only NWPs

- Potential to discharge to waters of the state
- Potential to re-suspend sediments—concerns about contamination
- Many were reviewed and certified—NWP 28, 35—contact ecology about review.

STATE 401 DECISIONS

- Certified
 - No additional review needed by Ecology if Corps determines State General Conditions are met
- Certified Subject to Conditions
 - State conditions may trigger additional review by Ecology. After review, Ecology will issue a Letter of Verification (LOV) or require an Individual 401 WQC.
- Denied without Prejudice
 - All projects or activities authorized by NWP must obtain an Individual 401 WQC from Ecology.



CZM DETERMINATIONS

- Concur
 - Activities meeting all the applicable conditions are deemed consistent with Washington's CZMP
- Concur, Subject to Conditions
 - Consistency has been determined for some, but not all actions authorized under the NWP. If the project or activity triggers 401 review, a CZM Certification of Consistency form should be submitted to Ecology.
- Object
 - Consistency with Washington CZMP cannot be determined. An Individual CZM determination must be obtained.



PROJECT REVIEW PROCESS

Army Corps issues Nationwide Permit letter.

ALL state general conditions are met.

At least ONE state general condition is not met.

Certified: No Ecology review required.

Certified subject to conditions: If project triggers a NWP-specific state condition, Ecology review is required.

Denied without prejudice: An Individual 401 WQC is required by Ecology.

Ecology review is required.

Corps NWP authorization letter will indicate if Ecology review will be required.

INDIVIDUAL 401 REVIEW

- What triggers “review?”
 - Project or activity does not meet at least one of the State General Conditions
 - Project or activity triggers a Nationwide Permit-specific state condition
- What does “review” mean?
 - Application materials should be submitted to Ecology for review by regional staff (JARPA, CZM form, mitigation plan, etc.)
 - Based on the project review, Ecology will issue a LOV or require an Individual 401 WQC.
 - Individual WQC will trigger a public notice



STATE GENERAL CONDITIONS

- APPLY TO ALL NATIONWIDE PERMITS!
- 2012 State General Conditions include:
 1. In-water construction activities
 2. Projects or Activities Discharging to Impaired Waters
 3. Notification Requirements
 4. Aquatic Resources Requiring Special Protection
 5. Mitigation
 6. Temporary Fills
 7. Stormwater Management
 8. State Certification for PCNs not receiving 45 day response.

1. In-water: 401 review will be triggered if project/activity will cause or is likely to cause/contribute to an exceedance of a state water quality standard. Standards are posted online (link in user's guide)

2. Impaired waters: 401 review required for projects/activities occurring in a 303d listed segment or upstream of a listed segment and may result in further exceedance of specific listed parameter. 303d maps/search tools link in users guide.

3. Notification requirements: If 401 review is triggered, condition outlines information needed by Ecology to review your project—same documentation as provided to the Corps for review—including delineations, mitigation plan, CZM forms, etc. Note about Ecology's timeline for review. Our review clock starts when we have the Corps authorization letter AND applicable application materials discussed in SGC 3.

4. Aquatic resources: 401 review required for aquatic resources requiring special protection—wetlands with special characteristics, high quality wetlands, eelgrass beds, etc.

5. Mitigation: If 401 review is triggered, impacts to resources should have adequate mitigation. Wetland mitigation should be based on current guidance documents. Information on alternative mitigation approaches in the user's guide.

6. Temp fills: review for any project with temp fills in wetlands/waters for more than 90 days, unless Ecology has already approved it. Does not apply to projects with coverage under NWP 33.

7. Stormwater: similar condition used to be listed under several nationwide permits. Decided to pull it out to the general conditions—want to make sure projects are designed to approved manual and obtain permits if needed. More information is provided in User's guide.

8. Corps default: 401 review is required for projects that do not receive a response from the Corps with 45day time period. National general Condition 31(2)

NATIONWIDE PERMITS - CERTIFIED

- **Must meet applicable State General Conditions**
 - **Certified by Ecology**
 - **Concur – CZM Determination**
- 1 Aids to Navigation
 - 2 Structures in Artificial Canals
 - 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
 - 5 Scientific Measurement Devices
 - 7 Outfall Structures & Associated Intake Structures
 - 9 Structures in Fleeting and Anchorage Areas
 - 10 Mooring Buoys
 - 11 Temporary Recreational Structures
 - 15 US Coast Guard Approved Bridges
 - 18 Minor Discharges
 - 20 Response Operations for Oil & Hazardous Subst.
 - 22 Removal of Vessels
 - 25 Structural Discharges
 - 30 Moist Soil Management for Wildlife
 - 31 Maintenance of Existing Flood Control Facilities

List of NWP's that Ecology certified for 401.

Projects must meet state general conditions.

A few of these are Section 10-only—1, 2, 8, 9, 10, 11

NATIONWIDE PERMITS – CERTIFIED, SUBJECT TO CONDITIONS

- Must meet applicable State General Conditions
- Certified, Subject to Conditions by Ecology
 - No changes to 2007 conditions
- Concur, Subject to condition – CZM Determination
- 6 Survey Activities
- 12 Utility Line Activities
- 23 Approved Categorical Exclusions
- 32 Completed Enforcement Actions
- 36 Boat Ramps
- 40 Agricultural Activities
- 45 Repair of Uplands Damaged by Discrete Events
- 46 Discharge in Ditches

Certified, subject to nationwide-permit specific conditions.

Must meet state general conditions.

The conditions for these permits did not change from the 2007 program.

If review is triggered, a CZM form must be submitted to Ecology.

Review outcome will be a LOV or WQC.

NATIONWIDE PERMITS – CERTIFIED, SUBJECT TO CONDITIONS

- Must meet applicable State General Conditions
- Certified, Subject to Conditions by Ecology
 - New or revised conditions
- Concur, Subject to condition – CZM Determination
- 3 Maintenance
- 14 Linear Transportation Projects
- 16 Return Water from Upland Contained Disposal Areas
- 27 Aquatic Habitat Restoration, Establishment, & Enhancement Activities
- 29 Residential Developments
- 33 Temporary Construction, Access, & Dewatering
- 34 Cranberry Production Activities
- 38 Cleanup of Hazardous and Toxic Waste
- 39 Commercial & Institution Developments
- 42 Recreational Facilities

Certified, subject to nationwide-permit specific conditions.

Must meet state general conditions.

Check User's Guide for complete conditions. Below are highlights of changes from the 2007 Program:

3 Maintenance – more than 1/10th acre of wetland impact; adding new structures

14 Linear Transportation Projects – project includes fill in residential/commercial lots

16 Return Water from Upland Contained Disposal Areas- activity in clean-up site

27 Aquatic Habitat Restoration, Establishment, & Enhancement Activities – revised to impacts of ½ acre or more to wetlands

29 Residential Developments – 2007 conditions revisited, 2 removed. Remaining conditions same as 2007

33 Temporary Construction, Access, & Dewatering – temp fill in ½ acre of wetland more than 90 days; temp fills in place longer than 6 months (DE waiver)

34 Cranberry Production Activities - included language addressing forested wetlands

38 Cleanup of Hazardous and Toxic Waste – affects more than ½ acre of wetlands; not authorized through MTCA or CERCLA

39 Commercial & Institution Developments – 2007 conditions removed (covered by other conditions); affects ¼ acre or more of wetlands

42 Recreational Facilities - 2007 conditions removed (covered by other conditions); affects ¼ acre or more of wetlands

If review is triggered, a CZM form must be submitted to Ecology.

Review outcome will be a LOV or WQC.

NATIONWIDE PERMITS – CERTIFIED, SUBJECT TO CONDITIONS

- Must meet applicable State General Conditions
- Certified, Subject to Conditions by Ecology
 - Change in certification, conditions, and/or review structure
- Concur, Subject to condition – CZM Determination
- 13 Bank Stabilization
- 19 Minor Dredging
- 28 Modifications of Existing Marinas
- 35 Maintenance Dredging of Existing Basins
- 41 Reshaping Existing Drainage Ditches
- 43 Stormwater Management Facilities
- 48 Commercial Shellfish Aquaculture Activities

Certified, subject to nationwide-permit specific conditions.

Must meet state general conditions.

The conditions for these permits underwent some major changes for the 2012 program. Work through each permit in the following slides.

If review is triggered, a CZM form must be submitted to Ecology.

Review outcome will be a LOV or WQC.

NATIONWIDE PERMITS – 13 BANK STABILIZATION

- **State 401 Certification** – Certified subject to conditions:
 - **Individual 401 Certification** is required for new, or expansion of existing, bank stabilization in marine and estuarine waters of Puget Sound.
 - **Individual 401 review** is required for projects or activities authorized under this NWP if:
 - The project or activity is greater than 500 feet in length.
 - The project or activity has not been designed and stamped by a Professional Engineer or Engineering Geologist.
 - The project or activity exceeds an average of one cubic yard per running foot below the Ordinary High Water Mark or High Tide Line.
 - The project or activity involves discharges of dredged or fill material into special aquatic sites.

Bank stabilization is a growing concern statewide.

Army Corps took a major step forward in addressing concerns around Puget Sound, state decided to take another step forward and address the concern sound-wide. With the support of citizens, state agencies, the Governor and tribes, we will individually certify any new/expanded bank stabilization in marine/estuarine waters of Puget Sound.

All bank stabilization projects will be subject to the state general conditions and the 401 review criteria—500 ft, PE, etc.

NATIONWIDE PERMITS –
28 MODIFICATIONS OF EXISTING MARINAS
35 MAINTENANCE DREDGING OF EXISTING
BASINS

- **STATE 401 Certification** – Applicant must contact Ecology to determine if Certification is required.
- *To determine if your project is in or adjacent to a cleanup site, visit Ecology Cleanup Projects search tool:*
<https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx>

Section 10 nationwide permits that the state would like to review under 401—concerns are focused on re-suspension / disturbance of sediments, work in contaminated, clean-up areas. Contact the federal permit unit or regional staff if you think your project will receive coverage under either NWP.

NATIONWIDE PERMITS –
41 RESHAPING EXISTING DRAINAGE DITCHES
43 STORMWATER MANAGEMENT FACILITIES

NWP 41

STATE 401 Certification –
Certified subject to conditions:

- The project or activity discharges dredged or fill material into a ditch that receives water from or discharges water to a wetland within ½ mile of project site.
- The project or activity occurs within a wetland.

NWP 43

STATE 401 Certification –
Certified subject to conditions:

- The project or activity includes a Cat I, Cat II, or Cat III (with a habitat score ≥ 20) wetland as part of a stormwater or flow control system.
- **NOTE:** *Including a Cat I or Cat II wetland in a stormwater treatment or flow control system is considered an impact and will need to be mitigated according to the rules of wetland mitigation.*

Previously DENIED for 401 certification. During workgroups, staff moved to certify with conditions and focus on resources of concern for these activities.

NWP 41—mirrors NWP 46—concerns about altering conditions in connected wetlands; reshaping of ditch should not result in any adverse drainage impacts.

NWP 43 – staff focused condition on the use of wetlands in stormwater treatment/flow control systems. Condition is consistent with updated stormwater guidance published in August 2012. (<http://www.ecy.wa.gov/programs/wq/stormwater/manual.html>)

NATIONWIDE PERMITS –
48 COMMERCIAL SHELLFISH AQUACULTURE
ACTIVITIES

- **State 401 Certification** – Certified subject to conditions:
- The project is a new or expanded geoduck operation, on private tidelands, that has not obtained a permit pursuant to an updated Shoreline Master Program (SMP). “Updated” means the SMP has been locally adopted, consistent with Ecology guidelines, after February 11, 2011(See Ecology for a list of these jurisdictions).
- The project is a new or expanded geoduck operation, on state-owned aquatic lands, that has not applied for an aquatic lands lease from WA Department of Natural Resources.

Revised our review criteria to be more consistent with updated shoreline master programs and other regulatory reviews.

NATIONWIDE PERMITS – DENIED WITHOUT PREJUDICE

- Denied without Prejudice by Ecology
 - Individual 401 WQC required for all projects, activities
- Object– CZM Determination
 - Individual CZM determination from Ecology required for all projects, activities
- 8 Oil and Gas Structures on the Outer Continental Shelf
- 17 Hydropower Projects
- 21 Surface Coal Mining Activities
- 37 Emergency Watershed Protection and Rehabilitation
- 44 Mining Activities
- 49 Coal Remining Activities
- 50 Underground Coal Mining Activities
- 51 Land-Based Renewable Energy Generation Facilities (new!)
- 52 Water-Based Renewable Energy Generation Pilot Projects (new!)

Denied—require individual WQC/CZM

If receiving coverage, talk to Ecology early.

APPLICATION MATERIALS

- JARPA: Joint Aquatic Resources Permit Application
 - Multi-agency, Multi-permit application form
 - Most current form available at www.epermitting.org

 - Supporting Documents
 - Site Plans and Drawing
 - Wetland Report, Rating forms, Mitigation and Monitoring Plans, Environmental Assessments
 - Copy of SEPA Determination and other permits, approvals

 - CZM Form
 - Available on Ecology's Federal Permit website

 - Send all application materials to Ecology HQ-Federal Permit Unit
- 

JARPA is our application—make sure to check the 401 box in Part 10 to formally request a 401 WQC.

QUICK REFERENCE

- Ecology's Website: www.ecy.wa.gov

 - Ecology's Federal Permit Unit:
 - www.ecy.wa.gov/programs/sea/fed-permit/
 - ecyrefedpermits@ecy.wa.gov
 - Mail: PO Box 47600, Olympia WA 98504
 - Regional staff (contact info on webpage)

 - Office of Regulatory Assistance
 - www.ora.wa.gov
 - help@ora.wa.gov
 - 1-800-917-0043
- 