

Regulatory Program Overview

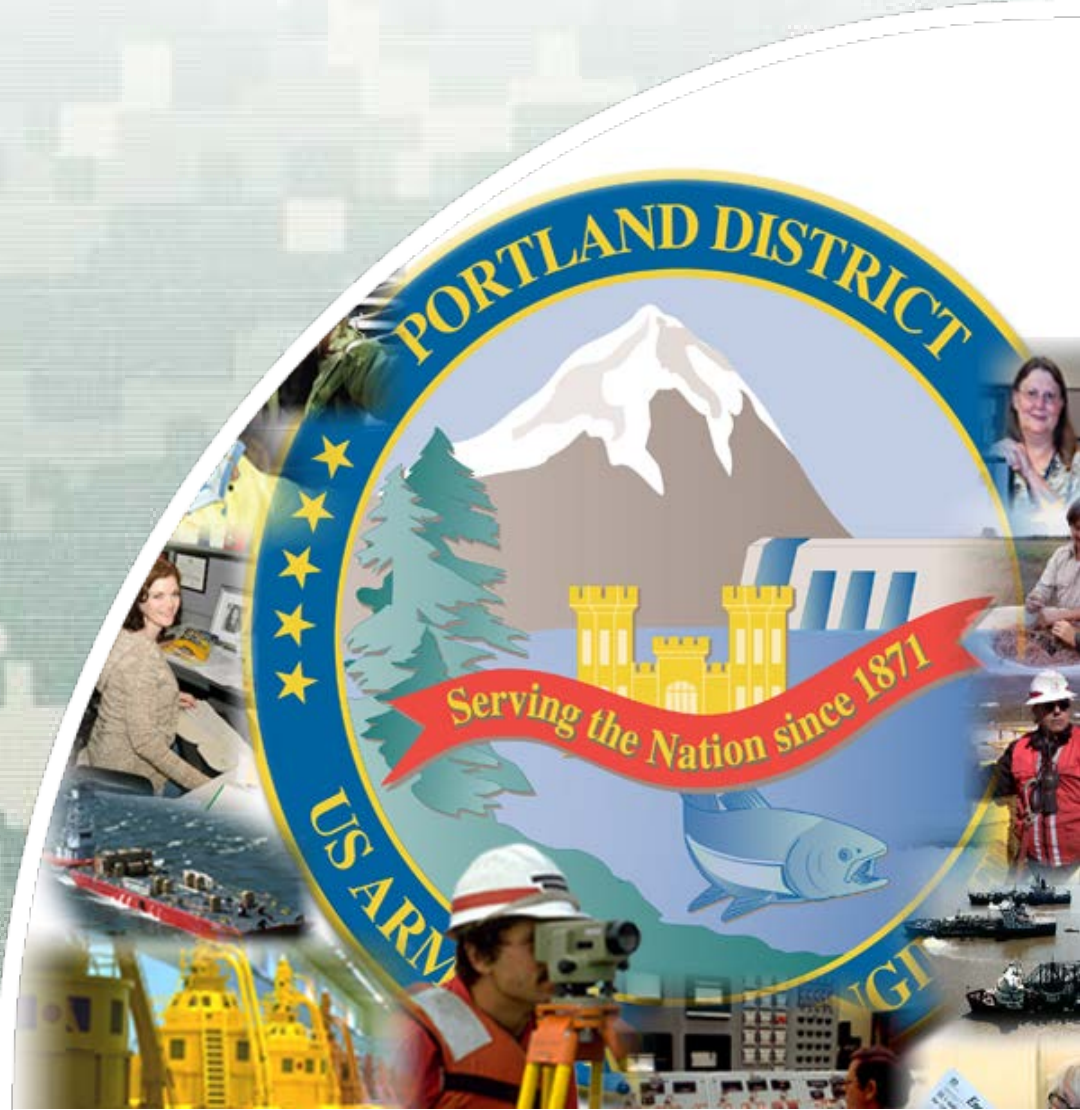
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Portland District

November 4, 2015

Oregon Conservation Partnership
Conference



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US Army Corps of Engineers
BUILDING STRONG®

Regulatory Mission

To protect the nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.



Corps Authorities

- Section 10 Rivers and Harbors Act (1899)
- Section 404 Clean Water Act (1972)
- Section 103 Marine Protection, Research and Sanctuaries Act (1972)



Section 10 Jurisdiction

The geographic jurisdiction of the Rivers and Harbors Act of 1899 includes all navigable waters of the United States which are defined (33 CFR Part 329) as, ***"those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce."*** This jurisdiction extends seaward to include all ocean waters within a zone three nautical miles from the coast line (the "territorial seas").



Section 404 Jurisdiction

- Dredge or fill activities as they pertain to “waters of the U.S.”
 - Waters currently or historically used for interstate or foreign commerce, including all waters which tidal
 - All interstate waters including wetlands, lakes, rivers and streams (including intermittent streams)
 - Impoundments of water, tributaries (as described above)
 - The territorial sea
 - Wetlands adjacent to waters of the U.S.



Section 404 Exemptions

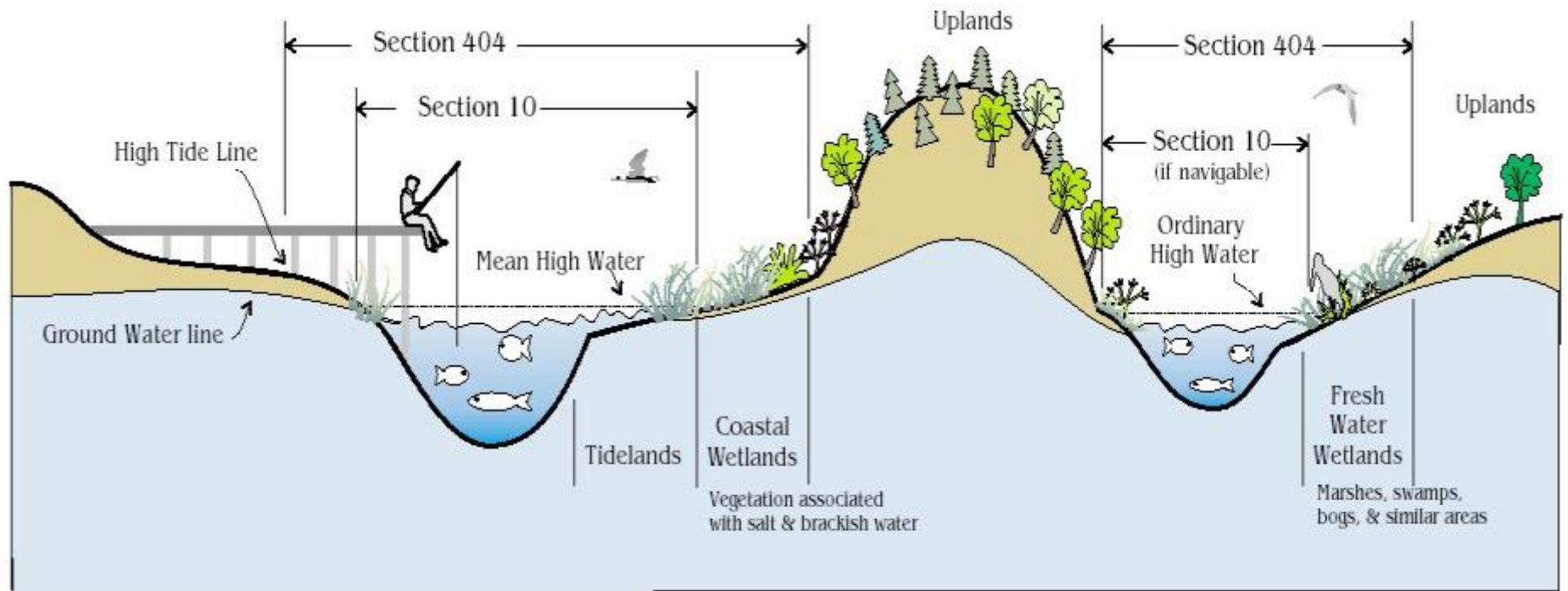
- Normal farming, silviculture and ranching activities
- Maintenance of currently serviceable structures and fill (within original fill footprint)
- Construction or maintenance of farm, stock ponds or irrigation ditches; maintenance of drainage ditches
- Construction of temporary sedimentation basins
- Construction or maintenance of farm and forest roads
- See 33 CFR 323.4 and contact your project manager



CORPS OF ENGINEERS REGULATORY JURISDICTION

Tidal Waters

Fresh Waters



Section 103
Ocean Discharge
of Dredged Material

Ocean discharges of
dredged material

Typical examples
of regulated activities

Section 404
Disposal of Dredged or Fill Material
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10
All Structures and Work
(navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.

Types of Permits

- General Permits
 - Nationwide permits
 - Regional General permits
 - 45 day review*
- Individual Permits
 - Standard permits
 - Letter of Permission
 - 120 day review*

** Review times may be longer, depending on complexity of project*



How We Interact with Other Agencies

- Section 7 – Endangered Species Act
 - National Marine Fisheries Service
 - U.S. Fish and Wildlife Service
- Section 106 – National Historic Preservation Act
 - State Historic Preservation Office
 - Native American tribes
- DEQ 401 Water Quality Certification



Clean Water Act Section 401 Water Quality Certification (WQC)

Program Overview for Conservation Projects

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Where does the authority come from?

**Section 401
of the
Clean Water Act**

Who requires a 401 WQC?

Applicants for federal permits or federal licenses for activities that may result in any discharge into federal jurisdictional waters must obtain a state certification

Who requires a 401 WQC?

Applicants for **federal permits or federal licenses** for activities that may result in any discharge into federal jurisdictional waters must obtain a state certification

The federal agency is usually the **U.S. Army Corps of Engineers (Corps)**

Why is this included?

To provide states and tribes the opportunity to ensure that any federally permitted or licensed activities that may result in any discharge into federal jurisdictional waters comply with the following:

- State water quality standards;
- Relevant sections of the Clean Water Act; and
- All other appropriate requirements of state law

Are any projects pre-certified?

Common Examples:

<i>Section 404</i>	<i>Pre-Certified?</i>
Individual	No
Nationwide	Sometimes
RGP4	Yes

If the activity is pre-certified, an individual 401 WQC is not required, but may be applied for to be considered for different requirements (e.g., higher turbidity limits)

What are typical conditions if it is pre-certified?

If it is pre-certified, the applicant must comply with the conditions:

- Land Use Compatibility Statement
- Vegetation restoration
- Stormwater Management Plan for new impervious surfaces
- Turbidity for in-water work
- Other specific requirements

What are typical individual 401 WQC requirements?

- Implementing erosion control measures
- Implementing turbidity best management practices, monitoring, and stop work requirements
- Restricting work to in-water work windows
- Maintaining fish passage
- Restoring impacted vegetation

How can a 401 WQC be obtained?

- If the project has new impervious surface or requires an individual 401 certification, ensure DEQ receives a copy of the Joint Permit Application
- Provide additional information to DEQ upon request
- Make adjustments to the project if needed
- Pay the 401 certification fee

What is the 401 WQC fee?

401 Tier	401 Fee
Tier 1	\$985
Tier 2A	\$4,390
Tier 2B	\$12,105
Tier 3	\$17,780
Tier 4	higher

- Fee is based on level of complexity and review time
- Pre-certified Nationwides are Tier 1 if there is new impervious surface
- Individuals are usually Tier 2A or 2B

What happens if you don't receive a 401 WQC?

If a 401 WQC is required,
401 WQC Denial = no federal permit or license

Tips for a successful project

- Design projects to fit conditions of general permits with “programmatic” 401 WQC if possible
 - Nationwide Permits
 - Regional General Permits
- Reply to DEQ questions and requests for information in a timely manner
- Make design adjustments if needed
- **Communicate** (desired start dates, project changes, etc.)