


State of Oregon

Department of Environmental Quality

Memorandum

Date: Jan. 12, 2017

To: Environmental Quality Commission

From: Richard Whitman, Director 

Subject: Agenda item O, Informational item: 401 water quality certification for the U.S. Army Corps of Engineers' nationwide 404 permits

Purpose of item DEQ will provide an update on the proposed 2017 Water Quality Certification for the Corps' nationwide permits.

Background Nationwide permits are a type of general permit issued by the U.S. Army Corps of Engineers for activities having minimal impacts on water quality. The nationwide permits cover 52 categories of activities. Projects that may have more significant water quality impacts, including impacts to streams and wetlands, may require an individual U.S. Army Corps of Engineers permit under section 404 of the federal Clean Water Act.

DEQ issues a nationwide section 401 Water Quality Certification for the U.S. Army Corps of Engineers nationwide 404 permits based on national and regional conditions that the Corps places on the permits. Applicants that qualify for a nationwide permit are eligible for a streamlined certification from DEQ. Other proposed projects not covered under the nationwide categories still require a standard individual certification.

Following final review and agency approval, DEQ will be issuing the 2017 Nationwide certification directly to applicants. The Corps will receive a letter of intent from DEQ which informs the Corps which nationwide categories DEQ plans to certify, certify with conditions, or deny – denial simply means that the applicant would need to apply for a standard individual certification.

DEQ updated the 401 fee rule in July 2013. Since there was a delayed effective date between when the approved fee rule was updated and the 2017 Nationwide Certification issuance, DEQ will begin charging nationwide certification applicants as directed by the fee rule. Applicants that qualify for the nationwide certification will be invoiced our lowest Tier 1 fee of \$985 per our rules. DEQ is not soliciting comments on fees or proposing changes to its fee rule.

Based on historical data, DEQ anticipates the total number of nationwide permits issued to be approximately 400 per year. The program staff and manager have met with the agency business office on several occasions to assure staff is prepared for the increase in workload.

DEQ has proposed to update conditions of the nationwide certification to ensure protection of water quality, yet not be overly burdensome for the applicants. Changes and updates clarify conditions of the certification and align with other DEQ water environmental clearances for consistency.

The Corps has also added two new categories to the 2017 Nationwide permit: Lowhead Dam Removal and Living Shorelines. DEQ has proposed updates within its program to address these categories.

Outreach included:

- Program staff presented at a Corps open house on Nov. 10, 2016
- Stakeholders were informed of public participation opportunities via phone and email the week of Nov. 28, 2016
- DEQ distributed fact sheet Nov. 29, 2016
- DEQ issued 45-day public notice on draft certification.
- An overview webinar was held Dec. 12, 2016; this was made available on-line for later viewing
- A public hearing is planned in Portland Jan. 10, 2017, with the Eugene and Bend offices open for participation.
- For stakeholders who have had questions, DEQ has provided responses via phone and email and will continue to do so through the public comment period.
- During the January EQC meeting, there will be another opportunity to provide comments during the regular public forum item

Next steps

The draft certification is currently out on public notice, which will close at 5 p.m. on January 19. DEQ intends to implement the 2017 nationwide permit and certification in March 2017, pending review of comments and final information.

**EQC
involvement**

This permit action does not require EQC approval and is for informational purposes.

Report prepared by Sara Christensen
401 Water Quality Certification Program Coordinator