



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 14, 2021

Colonel Alexander Bullock
District Engineer
Seattle District, Corps of Engineers
PO Box 3755
Seattle, Washington 98124-3755

RE: Revised State of Washington Clean Water Act Section 401 Water Quality Certification
Decision on the Proposed 41 Nationwide Permits.

Dear Colonel Bullock:

The Department of Ecology (Ecology) has made minor modifications to State General Conditions 1, 2, and 4 following a meeting between the U.S. Army Corps of Engineers (Corps) and Ecology October 13, 2021. It is our understanding that these modifications will aid in the Corps implementation of Ecology's programmatic Section 401 Water Quality Certification decision for the Nationwide Permits (NWP).

The attached programmatic Section 401 Water Quality Certification decision supersedes the decision document sent to the Corps October 12, 2021.

If you have any questions or would like additional information, please contact Loree' Randall (Loree.Randall@ecy.wa.gov) or Erin Hanlon Brown (Erin.HanlonBrown@ecy.wa.gov)

Sincerely,

A handwritten signature in blue ink, reading "Joenne McGerr".

Joenne McGerr
Program Manager
Shorelands and Environmental Assistance Program
Washington State Department of Ecology

Attachment – State of Washington Section Programmatic 401 Water Quality Certification Decisions and State Conditions for the U.S Army Corps of Engineers 41 Nationwide Permits in the Draft Final Rule. This document fully outlines Ecology’s Section 401 Certification decisions for activities which may result in a discharge and are carried out under a NWP for either Corps Section 404 and/or Section 10 permits.

State of Washington Department of Ecology
Programmatic Section 401 Water Quality Certification
Decisions and Conditions for the U.S. Army Corps of Engineers
41 Nationwide Permits in the Draft Final Rule
Modified October 14, 2021

Pursuant to Section 401 of the Clean Water Act (CWA), as the state water pollution control agency with jurisdictional authority of Washington's surface waters, the Department of Ecology (Ecology) is tasked with issuance of Section 401 Water Quality Certification (Water Quality Certification) of the Nationwide Permits (NWP) in Washington, with the exception of those lands where the U.S. Environmental Protection Agency (EPA) or a tribe has authority to give such Water Quality Certification. Ecology's Water Quality Certification decisions and conditions are based on information received during a public comment period, review of documentation provided by the U.S. Army Corps of Engineers (Corps), and Ecology's determination as to whether the NWP) comply with applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA, state water quality standards, and other applicable provisions of state law. Ecology's Water Quality Certification decisions and conditions apply to projects or activities authorized under Section 404 of the Clean Water Act and/or Section 10 of the River and Harbors Act, where Ecology is the certifying authority.

Ecology programmatic Section 401 Water Quality Certification decisions for Nationwide Permits (NWP)

A. State General Conditions for all Nationwide Permits

In addition to all of the U.S. Army Corps of Engineers' (Corps) national and Seattle District's regional permit conditions, the following state general Water Quality Certification conditions apply to all NWP) whether **granted or granted with conditions** in Washington.

Ecology individual Water Quality Certification is required if one or more of the following state general conditions is triggered.

1. **In-water construction activities.** Ecology individual Water Quality Certification is required for projects or activities authorized under NWP) where the project proponent has indicated on the Joint Aquatic Resource Permit Application (JARPA) question 9e that the project or activity will not meet State water quality standards, or has provided information indicating that the project or activity may or would cause or contribute to an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC).

Note: In-water activities include any activity within a jurisdictional wetland and/or waters.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below.

Additionally, the discharge of dredge or fill material and associated activities authorized by Corps NWPs can result in turbidity (e.g., total suspended and settleable solids) that can impair water quality. For example, concentrations of suspended solids above the criteria listed impair aquatic life uses by reducing the availability of food for fish and preventing the development of insect larvae, impeding fish migration and other aquatic life movement, preventing the development of fish eggs, and decreasing fish and other aquatic organisms' resistance to disease.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 -350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*

2. **Projects or Activities Discharging to Impaired Waters.** Ecology individual Water Quality Certification is required for projects or activities authorized under NWPs if the project or activity will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may or would cause or contribute to further exceedances of the specific listed parameter.

To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, this condition is needed because the NWPs do not provide sufficient project and activity specific information to determine that discharges will comply with specific water quality requirements related to the limits on total suspended solids, temperature, dissolved oxygen, nutrients, or pH for which a specific waterbody could be listed as impaired. Site specific analysis is required to determine whether the discharges from the project or activities comply with state water quality requirements in the active channel of a waterbody identified as a section 303(d) or TMDL listed impaired waterbody. This is to ensure implementation efforts to restore and protect the state's aquatic resources; where the state's waters are assessed, restoration and protection objectives are prioritized, and TMDL and alternative approaches are adaptively implemented to achieve state water quality goals with the collaboration of other state and federal agencies, tribes, stakeholders, and the public.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906, (Water Pollution Control Act).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260,*

WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).

- ***Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 - 350, WAC 173-204-400 – 420 WAC 173-204-500 - 590 (Sediment Management Standards).***
- ***Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).***

3. **Aquatic resources requiring special protection.** Ecology individual Water Quality Certification is required for:

1. Activities in or affecting the following aquatic resources:
 - a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):
 - Estuarine wetlands.
 - Wetlands of High Conservation Value.
 - Bogs.
 - Old-growth forested wetlands and mature forested wetlands.
 - Wetlands in coastal lagoons.
 - Wetlands in dunal systems along the Washington coast.
 - Vernal pools.
 - Alkali wetlands.
 - b) Fens, aspen-dominated wetlands, camas prairie wetlands.
 - c) Category I wetlands.
 - d) Category II wetlands with a habitat score ≥ 8 points.
2. Activities in or resulting in a loss of eelgrass (*Zostera marina*) beds.

This state general condition does not apply to the following NWP:

NWP 20 – *Response Operations for Oil and Hazardous Substances*

This condition is necessary to ensure that any discharge authorized under the NWP program will comply with state water quality requirements and other applicable state laws as cited below. Additionally, the wetlands of Washington are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetland destruction or impairment may result in increased public and private costs and property losses.

Wetland functions vary widely. When designating wetlands, science supports using a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

Estuarine wetlands, especially those that are larger, are relatively rare and provide unique natural resources that are considered to be valuable to society. These wetlands need a high level of protection to maintain their functions and the values society derives from them.

Camas prairies are included by scientists of the Washington Natural Heritage Program and Washington Department of Natural Resources (DNR) as high quality, relatively undisturbed wetlands, or wetlands that support state listed threatened or endangered plants. High quality, relatively undisturbed examples of wetlands are uncommon in Washington. The state is trying to provide a high level of protection to the undisturbed character of these remaining high quality wetlands. Examples of undisturbed wetlands help us to understand natural wetland processes.

Bogs and peatlands are extremely sensitive to disturbance and impossible to re-create through compensatory mitigation. Bogs are low nutrient, acidic wetlands that have organic soils. The chemistry of bogs is such that changes to the water regime or water quality of the wetland can easily alter its vegetation community. The plants and animals that grow in bogs and peatlands are specifically adapted to such conditions and do not tolerate changes well. Immediate changes in the composition of the plant community often occur after the water regime changes. Minor changes in the water regime or nutrient levels in these systems can have major adverse impacts on the plant and animal communities.

Coastal lagoons are shallow bodies of water, like a pond, partly or completely separated from the sea by a barrier beach. They may, or may not, be connected to the sea by an inlet, but they all receive periodic influxes of salt water. This can be either through storm surges overtopping the barrier beach, or by flow through the porous sediments of the beach. Wetlands in coastal lagoons probably cannot be reproduced through compensatory mitigation, and they are relatively rare in the landscape. No information has been found relating to attempts to create or restore coastal lagoons in Washington that would suggest this type of compensatory mitigation is possible. Any impacts to lagoons will, therefore, probably result in a net loss of their functions and values. In addition, coastal lagoons and their associated wetlands are proving to be very important habitat for salmonids.

Eelgrass serves a wide variety of ecological functions in nearshore ecosystems, and is critically linked to other valued ecosystem components. Eelgrass beds are highly productive, annually producing large amounts of carbon that fuel nearshore food webs, principally through detritus pathways. Eelgrass provides critical three-dimensional structure in otherwise two-dimensional environments, and many other marine organisms use this structure. Shellfish, such as crabs and bivalves, use eelgrass beds for habitat and nursery areas and feed indirectly on the carbon fixed by the plants. Fishes such as juvenile salmonids use eelgrass beds as migratory corridors as they pass through Puget Sound; the beds provide both protection from predators and abundant food, such as the small crustaceans associated with eelgrass.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).

- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).*

- 4. Loss of More than 300 Linear Feet of Streambed.** Ecology individual Water Quality Certification is required for any project that results in the loss of more than 300 linear feet of streambed.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, per RCW 90.48, it is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Ecology Water Quality Certification is required for projects or activities authorized under NWPs that may cause or contribute to an exceedance of a state water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC). State water quality standards and sediment management standards are available on Ecology's website.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 -350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 (Sediment Management Standards).*

- 5. Temporary Fills.** Ecology individual Water Quality Certification is required for any project or activity with temporary fill in wetlands or other waters for more than six months.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, per joint interagency (EPA, Corps, Ecology) guidance, long-term temporary impacts affect functions that will eventually be restored over time, but not within a year or so. Long-term temporary impacts carry a risk of permanent loss, such as when soil structure is altered by deep excavation or compacted by equipment.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*

- ***RCW 90.54.140 (Water Resources Protection Act).***
- ***Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).***
- ***Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).***

6. **Mitigation.** Project proponents are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resources wherever practicable.

This condition is necessary to ensure that unavoidable physical alterations are properly mitigated and that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, since a literal interpretation of the anti-degradation policy could result in preventing the issuance of any wetland fill permit under Section 401 of the Clean Water Act, it is logical to assume that Congress intended some such permits to be granted within the framework of the Act. This interpretation allows states to adopt a flexible approach to wetland management. For wetlands, allowing some alteration of water quality necessitates the use of mitigation as a method of “controlling pollution.” Activities are allowed to occur because, once mitigation is provided, the impacts are not considered significant enough to harm the environment, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as allowing some level of degradation where unavoidable or necessary.

Citation:

- ***Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).***
- ***RCW 90.54.140 (Water Resources Protection Act).***
- ***Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).***
- ***Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).***

7. **Stormwater Pollution Prevention.** All projects involving land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters.
- a) For land disturbances during construction, the applicant must obtain and implement permits (e.g., Construction Stormwater General Permit) where required and follow Ecology’s current stormwater manual.
 - b) Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces shall be provided.

Ecology’s Stormwater Management and Design Manuals and stormwater permit information are available on Ecology’s website.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, this condition reduces the negative water quality impacts of stormwater runoff from developed areas including sediment, oil, grease, and nutrients from entering into surface waters. Stormwater pollutants can impact streams, rivers, lakes, ponds, wetlands, and wells. This condition also ensures that the permit applicants meet the requirements of the National Pollutant Discharge Elimination System (NPDES) permits, if required.

Citation:

- ***Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).***
- ***Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).***
- ***Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 -350, WAC173-204-400 – 420, WAC 173-204-500 - 590 (Sediment Management Standards).***
- ***Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).***

B. Nationwide Permits where Ecology Grants Water Quality Certification

Ecology **grants Water Quality Certification** for the following NWPs provided that the project meets all of the state general conditions. Ecology has determined that the activities identified within the following NWPs will not violate applicable state water quality standards, provided the work is done in accordance with the NWPs national and regional conditions.

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 and Associated Intake Structures
9	Structures in Fleeting and Anchorage Areas
10	Mooring Buoys
11	Temporary Recreational Structures
16	Return Water from Upland Contained Disposal Areas
18	Minor Discharges
20	Response Operations for Oil and Hazardous Substances
22	Removal of Vessels
25	Structural Discharges
30	Moist Soil Management for Wildlife
31	Maintenance of Existing Flood Control Facilities
33	Temporary Construction, Access, and Dewatering

C. Nationwide Permits Where Ecology Granted with Conditions Water Quality Certification

Ecology **grants with conditions Water Quality Certification** for the NWPs identified in the table below. Ecology individual Water Quality Certification is required if any of the Ecology state general conditions or NWP specific conditions are not met.

3	Maintenance
6	Survey Activities
13	Bank Stabilization
14	Linear Transportation Projects
15	U.S. Coast Guard Approved Bridges
19	Minor Dredging
23	Approved Categorical Exclusions
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28	Modifications of Existing Marinas
34	Cranberry Production Activities
35	Maintenance Dredging of Existing Basins
36	Boat Ramps
38	Cleanup of Hazardous and Toxic Waste
45	Repair of Uplands Damaged by Discrete Events
46	Discharges in Ditches

NWP 3 - Maintenance

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity involves the complete replacement of a shoreline stabilization using hard armoring.
2. The project or activity increases the original footprint of the structure by more than 1/10th acre in wetlands; or
3. The project or activity includes adding a new structure, such as a weir, flap gate/tide gate, or culvert to the site.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Due to the diverse types of projects authorized under this NWP and because there are other appropriate and practicable alternatives that better protect aquatic resources, not all projects or activities fit under this NWP. Some are best determined on a case-by-case basis to ensure projects will be constructed in a manner to avoid and minimize adverse impacts to beneficial and existing uses of surface waters.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *RCW 90.54.140 (Water Resources Protection Act).*
- *Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).*

6 – Survey Activities

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity involves oil or natural gas exploration; or
2. The project or activity requires trenching in wetlands.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, these conditions are needed to ensure that all avoidance and minimization considerations have been implemented prior to impacting aquatic resources from oil or natural gas exploration and/or trenching in wetlands.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *RCW 90.54.140 (Water Resources Protection Act).*
- *Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 -350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 (Sediment Management Standards).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 WAC (Hydraulic Code Rules).*

13 – Bank Stabilization

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for all projects and activities authorized under this NWP if:

1. The project or activity includes new, complete replacement, or expansion of existing,

bank stabilization measures in marine and estuarine waters of the Salish Sea; or

2. The project or activity has a length greater than 500 feet (individually or cumulatively) along the bank; or
3. The project or activity has not been designed and stamped by a Professional Engineer or Engineering Geologist; or
4. The project or activity exceeds an average of one cubic yard per running foot below the OHWM or High Tide Line.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, replacement of existing hard armor bank stabilization with new hard armor extends impacts in time, perpetuating impacts to water quality and beneficial uses, including aquatic life and human recreation. Because of the diverse types of projects authorized under this NWP and because appropriate and practicable alternatives for shoreline stabilization that better protect aquatic resources are available, including more ecologically beneficial soft or bioengineering techniques, this condition is necessary to ensure projects will be designed and constructed in a manner to avoid and minimize adverse impacts to beneficial uses.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).
- RCW 90.54.140 (Water Resources Protection Act).
- Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).
- Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).
- Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 -350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 (Sediment Management Standards).
- Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).

14 – Linear Transportation Projects

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity impacts more than 1/3 acre of waters; or
2. The project or activity is in a known contaminated or cleanup site; or
3. This NWP is authorized in conjunction with any other NWP.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, these conditions are necessary to ensure that multiple crossings for the same project are not allowed without the necessary BMPs and mitigation. Without these conditions an unlimited number of crossings resulting in more than minimal adverse environmental effects and degradation to water quality could occur. Activities authorized by NWPs and other general permits must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal adverse effects on the environment.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).
- RCW 90.54.140 (Water Resources Protection Act).
- Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).
- Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).
- Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).
- Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).
- Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).

15 – U.S. Coast Guard Approved Bridges

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity triggers an individual U.S. Coast Guard bridge permit.

Note: An Advance Approval from the U.S. Coast Guard is not considered a bridge permit and would not require Ecology individual Water Quality Certification.

This condition is necessary to ensure that project proponents obtain the appropriate authorization from the Coast Guard prior to any discharge authorized under this NWP. This will ensure that the project or activity complies with state water quality requirements and other applicable state laws as cited below.

Note: Per Section 401 of the CWA, Ecology will be required to issue an individual Water Quality Certification for an individual Coast Guard permit.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).

- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*

19 – Minor Dredging

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity is in a known contaminated or cleanup site.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality and sediment quality requirements and other applicable state laws as cited below. Specifically, this condition is necessary to ensure that contaminated sediment and cleanup sites are not dredged in a manner which would result in resuspension and deposition of contaminated sediment in the water column, in order to protect beneficial and existing uses of surface waters from contaminants being released from the sediments.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *RCW 90.54.140 (Water Resources Protection Act).*
- *Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*
- *Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).*
- *Chapter 173-340 WAC, WAC 173-340-310, 173-340-350, 173-340-360, 173-340-400, 173-340-410, 173-340-440 (Model Toxics Control Act – Cleanup).*

23 – Approved Categorical Exclusions

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity has fill impacts to waters greater than ½ acre.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, this condition is needed to protect beneficial and existing uses of wetland and surface waters to ensure that unavoidable impacts are minimized and/or mitigated.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).
- RCW 90.54.140 (Water Resources Protection Act).
- Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).
- Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).
- Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 – 590 WAC (Sediment Management Standards).

27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity directly impacts ½ acre or more of tidal waters; or
2. The project or activity affects ½ acre or more of wetlands; or
3. The project or activity is a mitigation bank or an advance mitigation site; or
4. The project or activity is in a known contaminated or cleanup site.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality and sediment quality requirements and other applicable state laws as cited below. Additionally, they are needed to protect beneficial and existing uses of surface waters and to ensure that unavoidable impacts are mitigated. Site specific conditions may be necessary to ensure that the project meets the requirements for net-increase in beneficial uses and aquatic resource functions.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).
- RCW 90.54.140 (Water Resources Protection Act).
- Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).
- Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612

- (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*
 - *Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).*
 - *Chapter 220-660 WAC, WAC 220-660-080 - 450 WAC (Hydraulic Code Rules).*
 - *Chapter 173-340 WAC, WAC 173-340-310, 173-340-350, 173-340-360, 173-340-400, 173-340-410, 173-340-440 (Model Toxics Control Act – Cleanup).*

28 – Modifications to Existing Marinas

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP that have a potential to discharge to waters and/or have a potential to re-suspend sediments if:

1. The project or activity is in or adjoining a known contaminated or cleanup site.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality and sediment quality requirements and other applicable state laws as cited below. Specifically, this condition is needed to protect beneficial and existing uses of surface waters from contaminants being released from the sediments.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 WAC (Hydraulic Code Rules).*
- *Chapter 173-340 WAC, WAC 173-340-310, 173-340-350, 173-340-360, 173-340-400, 173-340-410, 173-340-440 (Model Toxics Control Act – Cleanup).*

34 – Cranberry Production Activities

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity is a new, or expansion of existing cranberry operations.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, Ecology individual Water Quality Certification is required for projects or activities authorized under NWPs that will cause, or may be likely to cause or contribute to an exceedance of state water quality standard or sediment management standard. The primary means for protecting water quality in wetlands is through implementation of the antidegradation section of the water quality standards. The antidegradation policy establishes the bottom line for water quality protection in Washington's waters: "Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed."

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).
- RCW 90.54.140 (Water Resources Protection Act).
- Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).
- Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).
- Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).

35 – Maintenance Dredging of Existing Basins

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP that have a potential to discharge to waters and/or have a potential to re-suspend sediments if:

1. The project or activity is in or adjoining a known contaminated or cleanup site.

This condition is necessary to ensure that any discharge authorized under this NWP will comply with state water quality and sediment quality requirements and other applicable state laws as cited below. Specifically, this condition is needed to protect beneficial and existing uses of surface waters from contaminants being released from the sediments.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).
- RCW 90.54.140 (Water Resources Protection Act).
- Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).
- Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).
- Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC

173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).

- *Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).*
- *Chapter 173-340 WAC, WAC 173-340-310, 173-340-350, 173-340-360, 173-340-400, 173-340-410, 173-340-440 (Model Toxics Control Act – Cleanup).*

36 – Boat Ramps

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity involves poured- in- place concrete below the OHWM or High Tide Line; or
2. The project or activity is in a known contaminated or cleanup site.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality and sediment quality requirements and other applicable state laws as cited below. Additionally, they are necessary to ensure that projects and activities authorized by this NWP results in no more than a minimal adverse impacts on an individual or cumulative basis, and to ensure that concrete contaminants are not discharged and that contaminated sediments are not disturbed and result in resuspension and deposition of contaminated sediment in the water column that could impact beneficial and existing uses of surface waters.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *RCW 90.54.140 (Water Resources Protection Act).*
- *Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*
- *Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).*
- *Chapter 173-340 WAC, WAC 173-340-310, 173-340-350, 173-340-360, 173-340-400, 173-340-410, 173-340-440 (Model Toxics Control Act – Cleanup).*

38 – Cleanup of Hazardous and Toxic Waste

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity is not authorized through a Model Toxics Control Act (MTCA) order or a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) order.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality requirements and other applicable state laws as cited below. Additionally, they are necessary to ensure that projects and activities authorized by this NWP do not release additional pollution or contaminated sediment into the environment as a result of the cleanup.

Citation:

- Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).
- RCW 90.54.140 (Water Resources Protection Act).
- Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).
- Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).
- Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).
- Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).
- Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).
- Chapter 173-340 WAC, WAC 173-340-310, 173-340-350, 173-340-360, 173-340-400, 173-340-410, 173-340-440 (Model Toxics Control Act – Cleanup).

45 – Repair of Uplands Damaged by Discrete Events

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity involves impacts to waters greater than ½ acre.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality and sediment quality requirements and other applicable state laws as cited below. Additionally, Ecology needs to evaluate the significance of the damage and impacts of the event along with any potential impacts of the repairs. This allows Ecology to gain an understanding of the pre- and post- disaster landscape to assist in the measurement, analysis, and modeling of disaster recovery outcomes.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *RCW 90.54.140 (Water Resources Protection Act).*
- *Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).*

46 – Discharge in Ditches

Ecology Section 401 Certification – Granted with conditions. Ecology individual Water Quality Certification is required for projects or activities authorized under this NWP if:

1. The project or activity involves impacts to waters greater than ½ acre.

These conditions are necessary to ensure that any discharge authorized under this NWP will comply with state water quality and sediment quality requirements and other applicable state laws as cited below. Additionally, they are necessary to ensure that discharges into ditches implement all methods and measures to avoid and minimize adverse impacts during construction and that the ongoing discharge does not physically alter or impact receiving waters or wetlands.

Citation:

- *Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).*
- *RCW 90.54.140 (Water Resources Protection Act).*
- *Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).*
- *Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).*
- *Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 – 350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 WAC (Sediment Management Standards).*
- *Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).*
- *Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).*

D. Nationwide Permits where Ecology Denies Water Quality Certification

Ecology **denies Water Quality Certification** for the NWPs identified in the table below.

8	Oil and Gas Structures on the Outer Continental Shelf
17	Hydropower Projects
32	Completed Enforcement Actions
37	Emergency Watershed Protection and Rehabilitation
41	Reshaping Existing Drainage and Irrigation Ditches
49	Coal Remining Activities
53	Removal of Low-Head Dams
54	Living Shorelines
59	Water Reclamation and Reuse Facilities

Ecology's denial of these NWPs is based on our inability to determine if projects and activities that the Corps would authorize under these NWPs will comply with the state water quality requirements and other applicable state laws. It is unclear if the projects or activities under these NWPs would have potential significant alteration in physical, chemical, and biological integrity, and adverse impacts to water quality. Additionally, the Corps has not provided Ecology adequate information regarding the discharge types, quantities, and specific locations, number of discharges expected to be authorized, as well as the conditions of receiving waters and the quantities of waters (including wetlands) that may be lost from authorizing projects and activities under these NWPs. For these reasons, Ecology is denying Water Quality Certification for the NWPs listed in the table above and an individual Water Quality Certification is required for those projects and activities the Corps authorized with these NWPs.

The following project specific water quality data or information would be needed for all projects or activities authorized by the NWPs listed above to ensure that the range of discharges from potential projects or activities will comply with water quality requirements and other applicable state laws:

- 1) *the name or segment identifier of the receiving water(s) and/or wetland(s);*
- 2) *the specific location(s) of the project's activities and discharges;*
- 3) *the type and amount of the discharge(s);*
- 4) *the area of impact to the receiving water(s) and/or wetland(s) from the discharges;*
- 5) *available baseline condition assessment or monitoring data for the waterbody and/or wetlands receiving the discharge(s);*
- 6) *proposed methods and means for monitoring the discharge(s) into the receiving water(s) and/or wetland(s); and*
- 7) *any measures the project or activity will implement to reduce and/or offset the effects of the discharge(s), including any compensatory mitigation for unavoidable impacts.*

Citation:

- *CWA Sections 301, 302, 303, 306, and 307.*

- ***CWA Section 401 Certification Rule (40 CFR 121).***
- ***Chapter 90.48 RCW, RCW 90.48.010, 90.48.030, 90.48.120, RCW 90.48.160 – 906 (Water Pollution Control Act).***
- ***RCW 90.54.140 (Water Resources Protection Act).***
- ***Chapter 90.74 RCW, RCW 90.74.005-040 (Aquatic Resources Mitigation).***
- ***Chapter 173-201A WAC, WAC 173-201A-010 – 030, WAC 173-201A-200 – 260, WAC 173-201A-300 – 330, WAC 173-201A-500 – 530, WAC 173-201A-600 – 612 (Water Quality Standards for Surface Waters of the State of Washington).***
- ***Chapter 173-204 WAC, WAC 173-204-110 – 130, WAC 173-204-300 -350, WAC 173-204-400 – 420, WAC 173-204-500 - 590 (Sediment Management Standards).***
- ***Chapter 173-226 WAC, WAC 173-226-020 – 250 (Waste Discharge General Permit Program).***
- ***Chapter 220-660 WAC, WAC 220-660-080 - 450 (Hydraulic Code Rules).***
- ***Chapter 173-340 WAC, WAC 173-340-310, 173-340-350, 173-340-360, 173-340-400, 173-340-410, 173-340-440 (Model Toxics Control Act – Cleanup).***



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

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October 12, 2021

Colonel Alexander Bullock
District Engineer
Seattle District, Corps of Engineers
PO Box 3755
Seattle, Washington 98124-3755

RE: State of Washington Clean Water Act Section 401 Water Quality Certification Decisions
on the Proposed 41 Nationwide Permits.

Dear Colonel Bullock:

On August 18, 2021, Department of Ecology (Ecology) received a letter from the U.S. Army Corps of Engineers (Corps) Seattle District notifying certifying authorities of the opportunity to revise or reconsider their Section 401 Water Quality Certification (WQC) decisions submitted December 2020 for the 41 Nationwide Permits (NWP) that have not yet been finalized. As a result, the reasonable period of time for Ecology to act on the WQC request was extended until October 14, 2021.

In response, Ecology has reconsidered and revised the decisions provided to the Corps on December 13, 2020 for the remaining 41 NWPs. For the 16 NWPs finalized January 13, 2021, the programmatic WQC will not apply and individual WQC will be required as the Corps declined to rely on Ecology's decision as stated in the letter received June 17, 2021.

Ecology's determination as to whether the NWPs comply with applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA, the state water quality standards, and other applicable provisions of state law are reflected in our decisions to grant, grant with conditions, deny, or waive certification.

The following state general conditions apply to all NWP's whether Water Quality Certification is granted or granted with conditions.

- Compliance with water quality standards for in-water construction activities.
- No further exceedance of specific listed parameter(s) in 303(d) listed waterbodies.
- Aquatic resources requiring special protection.
- Loss of more than 300 linear feet of streambed.
- Approval of temporary fills in place for more than six months.
- Mitigation requirements.
- Stormwater discharge pollution prevention.

Ecology's decisions for the proposed 41 NWP's are summarized below. The detailed NWP specific conditions, justifications, and citations are within the attached decision document.

Ecology grants Section 401 Water Quality Certification for:

NWP # 1, 2, 4, 5, 7, 9, 10, 11, 16, 18, 20, 22, 25, 30, 31 and 33.

Ecology grants with conditions Section 401 Certification for:

NWP # 3, 6, 13, 14, 15, 19, 23, 27, 28, 34, 35, 36, 38, 45, and 46.

Ecology denies Section 401 Certification for:

NWP # 8, 17, 32, 37, 41, 49, 53, 54, and 59.

It should be noted that the Seattle District did not request Water Quality Certification for NWP's 1, 2, 8, 9, 10, 11, 28, and 35, because, in their opinion, activities authorized by these NWP's would not result in a discharge into waters of the United States. However, Ecology believes, some activities may result in a discharge into waters. Therefore, Ecology is providing Water Quality Certification for any activity authorized by these listed NWP's.

This letter and attachment constitutes Ecology's Programmatic Water Quality Certifications for the 41 NWP's that have not yet been finalized. These Water Quality Certification decisions apply to all NWP permits authorized in Washington by the Seattle District or Portland District Corps that may result in a discharge into a water where Ecology is the certifying authority.

Ecology's Water Quality Certification decisions neither replace or supersede requirements set forth by other local, state, federal, and Tribal laws, nor eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.

If you have any questions or would like additional information, please contact Loree' Randall (Loree.Randall@ecy.wa.gov) or Erin Hanlon Brown (Erin.HanlonBrown@ecy.wa.gov)

Sincerely,

A handwritten signature in blue ink, appearing to read "Joenne McGerr". The signature is fluid and cursive, with the first name "Joenne" written in a larger, more prominent script than the last name "McGerr".

Joenne McGerr
Program Manager
Shorelands and Environmental Assistance Program
Washington State Department of Ecology

Attachment – State of Washington Section 401 Water Quality Certification Decisions and State Conditions for U.S Army Corps of Engineers Proposed 41 Nationwide Permits in the Final Draft Rule. This document fully outlines Ecology's Section 401 Certification decisions for activities that may result in a discharge and are carried out under a NWP for either Corps Section 404 and/or Section 10 permits.