What Is Considered A Violation Of Section 404 Or Oregon's Removal-Fill Law?

Violations fall into two broad categories:

1. **Failure to comply with the terms and conditions of a Section 404 or ODSL permit.** The Corps and ODSL are typically the lead agencies for resolving these types of violations; or
2. **Discharge of dredged or fill material to waters of the United States without a permit when one is required.** Either the Corps or EPA, in conjunction with ODSL, may be the lead enforcement agency for unauthorized activities.

What Are The Penalties For An Unauthorized Activity Under 404?

It is EPA's general policy to seek complete restoration of impacted waters where an unauthorized discharge would not qualify for an after-the-fact authorization under Section 404.

Restoration often includes monitoring periods which can extend up to 10 years to ensure the site restoration goals have been met.

In addition to restoration, EPA may also seek penalties up to $37,500 per day for violation of Section 404 requirements. EPA can also seek criminal penalties for Section 404 violations. EPA generally reserves its criminal enforcement authority for flagrant and egregious Section 404 violations.

Working in waterways or wetlands without an ODSL permit or contrary to the conditions of an issued permit, is a criminal misdemeanor in Oregon punishable by a fine of up to $6,250 and one year in jail. Violators may also be subject to a civil penalty of up to $10,000 per day of violation.

Where Can I Learn More?

- U.S. Environmental Protection Agency Region 10 404 Program Webpage: http://yosemite.epa.gov/R10/ecocomm.nsf/Wetlands/Wetlands
- U.S. Army Corps of Engineers Portland District Regulatory Program website: http://www.nwp.usace.army.mil/op/g/home.asp
- Section 404 of the Clean Water Act: a copy can be found on EPA's website at: http://www.epa.gov/OWOW/wetlands/regs/sec404.html
- Regulatory text for the Section 404 program can be found in the federal Code of Federal Regulations at 40 CFR Parts 230-233 http://ecfr.gpoaccess.gov
- The Construction Industry Compliance Assistance Center (CICA): CICA is a source for plain language explanations of environmental rules for the construction industry. CICA website: http://www.cicacenter.org/wetlands.htl
- Oregon Department of State Lands Wetlands/Waterways Removal-Fill website: http://oregonstatelands.us/DSL/PERMITS/index.shtml

EPA-910-R-09-009

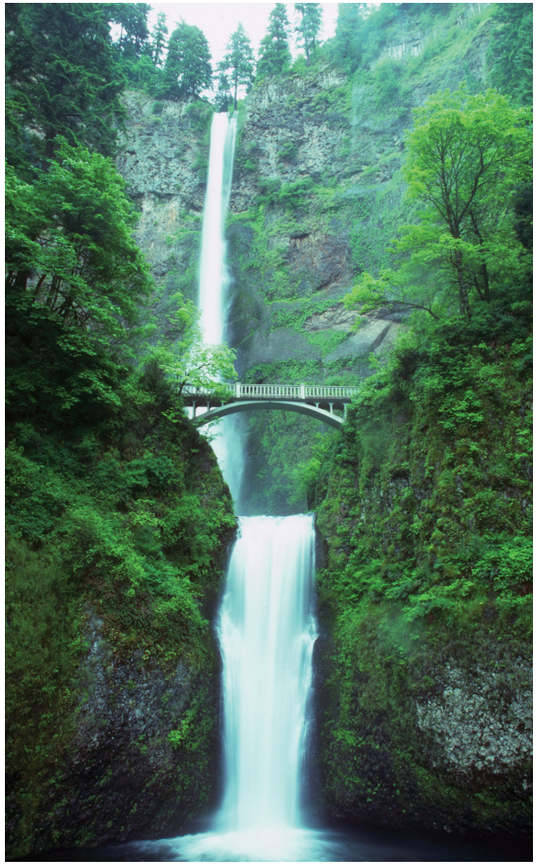
EPA
United States Environmental Protection Agency

Clean Water Act § 404

Regulatory Overview for Oregon

SCIENCE

Oregon Operations Office
US EPA Region 10



What Are The "Waters Of The United States"

The "waters of the United States" protected under the Clean Water Act (CWA) includes all tidal and interstate waters, and certain lakes, ponds, rivers, streams, impoundments, and wetlands. Determining whether a particular waterbody is a "water of the United States" or jurisdictional can be complex. Information on making these determinations can be found at http://www.epa.gov/wetlands/guidance/CWAwaters.html

Why Protect "Waters Of The U.S.?"

Clean water, including streams, shorelines, estuaries and wetlands, all contribute to the social, economic and environmental health of our nation. We can't live without it. Protecting the waters of the U.S. is an investment in our quality of life.

Waters, including wetlands, provide essential habitat for fish and wildlife. Wetlands are some of the most productive ecosystems in the world, comparable to tropical rain forests and coral reefs. Salmon, ducks and otters are examples of animals that depend on aquatic habitats. Wetlands that are part of stream and river systems provide critical rearing and overwintering habitat for juvenile salmon.

Healthy aquatic habitats support economically important industries in the Pacific Northwest such as recreational and commercial fishing.

Wetlands are extremely important for water storage and protecting water quality. By retaining snowmelt and runoff, they help to recharge the groundwater that supplies our wells and they stabilize stream flows and lake levels. This also helps to reduce flood events and flood damage.

Wetlands filter sediment, nutrients, and toxic pollutants out of surface water. This helps to keep pollutants out of our wells and out of the lakes where we fish and swim. The construction of water treatment plants to do the same thing would cost millions of dollars for every community.

What Is The Clean Water Act Section 404 Permitting Program And How Does It Work In Oregon?

Section 404 of the CWA establishes a permitting program for the discharge of dredged or fill material into waters of the United States. The discharge of dredged material can include re-deposition of fill materials, such as soils, into waters at the site. Examples of activities which may require Section 404 permits are: using equipment to re-channelize a stream; using heavy equipment to land clear wetlands; and ditching.

The U.S. Army Corps of Engineers (Corps) and the U.S. EPA co-administer the Section 404 program. The Corps issues Section 404 permits that meet the environmental standards developed by EPA. EPA provides oversight of the Section 404 program. EPA reviews proposed permit activities, evaluates compliance with the program's regulations (the 404(b)(1) Guidelines) and prohibits the issuance of permits in some instances. Both agencies have enforcement authorities.

In the State of Oregon, aquatic resources are also regulated by the Oregon Department of State Lands (ODSL) under an independent state authority. Under Oregon's Removal-Fill Law, state permits are required for most activities that affect more than 50 cubic yards of material in streams, lakes, estuaries and wetlands. Almost all activities, regardless of size, need a permit in Oregon Scenic Waterways and in streams designated "essential salmonid habitat."

What Are The Permitting Requirements?

Permits can be issued for the placement of dredged or fill material if there are no practicable alternatives to the proposed activity, and if impacts to the aquatic environment have been avoided and minimized to the maximum extent practicable. The Section 404 (b)(1) Guidelines require that only the least environmentally damaging practicable alternative for any project be authorized.

There are several different types of permits available from the Corp and ODSL. An individual permit is used for projects that do not qualify for categorical permitting and/or for projects proposing significant impacts to the aquatic environment. Other categories of permitting such as Nationwide permits (or General Authorizations by ODSL) and Regional General Permits are available for projects that fit defined categories of activities that have minimal impacts to the aquatic environment. NOTE: The Corps and ODSL use a joint application form since many projects that require a federal permit also require a separate state permit.