

Section 401 Water Quality Certification

Department of Health
Environmental Management Division
Clean Water Branch

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<http://www.hawaii.gov/health/environmental/water/cleanwater/index.html>

Water Pollution Control Requirements



Federal Requirements

◆ Clean Water Act, Subsection 401(a):

- ◆ “Any **applicant** for a **Federal license or permit** to conduct any activity including, but not limited to, the construction or operation of facilities, which may **result** in any **discharge** into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act. . . .”

[40 CFR 121.16]

[33 CFR 325.2.b.1]



State Water Pollution Control Requirements

- ◆ Hawaii Revised Statutes (HRS)

- Chapter 342D, Water Pollution

- http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0342D/

- ◆ Hawaii Administrative Rules

- Chapter 11-54, Water Quality Standards

- Chapter 11-55, Water Pollution Control

- <http://www.hawaii.gov/health/about/rules/admrules.html>



HRS, § 342D-50

◆ **§342D-50 Prohibition.** (a) No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.



HRS, 342D-53

- ◆ **[§342D-53] Certifying agency.** The director may act as a certifying agency, as defined in 40 Code of Federal Regulations 121.1(e) (1985). [L 1989, c 212, pt of §2]



Goals

- ◆ To ensure that Hawaii's coastal waters are safe and healthy for people, plants and animals
- ◆ To protect and restore the quality of Hawaii's streams, wetlands, estuaries and other inland waters for fish and wildlife, recreation, aesthetic enjoyment and other designated uses



What is "Certification"

◆ "Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable **water quality standards**. A water quality certification is required by Section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

◆ [HAR, 11-54-9.1]



Objective

- ◆ Ensure that CWA, Section 404 and all other Federally permitted activities will not adversely impact the existing uses, designated uses, and applicable water quality criteria of the receiving State waters.



Should a Section 401
WQC be applied for?



Who to Contact?

- ◆ Contact Clean Water Branch at
(808) 586-4309; or
- ◆ Contact Regulatory Branch of the
Honolulu Engineer District (HED), U.S.
Army Corps of Engineers (COE) at
(808) 438-9258



Water Quality Standards (WQS)

- ◆ General policy of water quality antidegradation.
- ◆ Designated Uses (Beneficial Uses)
- ◆ Water Quality Criteria



Antidegradation Policy

HAR, 11-54-1.1

- ◆ (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

[§11-54-1.1(a)]



Definition

- ◆ *Existing uses* are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.



Antidegradation Policy

HAR, 11-54-1.1

- ◆ (c) Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

[HAR, 11-54-1.1(c)]



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Definition

- ◆ **Existing uses** are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.
- ◆ **Designated uses** are those uses specified in water quality standards for each water body or segment whether or not they are being attained.
- ◆ **Criteria** are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.



Designated Uses

- ◆ HAR §11-54-3 Classification of water uses.



Classification of State Waters

- ◆ State waters are classified as either inland waters or marine waters.
 - ◆ Inland waters may be fresh, brackish, or saline. (Class 1.a, 1.b and 2)
 - ◆ All marine waters are either embayments, open coastal, or oceanic waters. (Class AA, and A)



Classification of State Waters (continue)

◆ All marine waters which are embayments or open coastal waters are also classified according to the following bottom subtypes: (Class I and II)

- ◆ (A) Sand beaches;
- ◆ (B) Lava rock shorelines and solution benches;
- ◆ (C) Marine pools and protected coves;
- ◆ (D) Artificial basins;
- ◆ (E) Reef flats; and
- ◆ (F) Soft bottoms

[HAR, 11-54-2]



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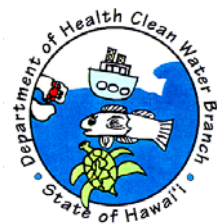


Water Quality Criteria

- ◆ **HAR §11-54-4** Basic water quality criteria applicable to all waters
- ◆ **HAR §11-54-5** Uses and specific criteria applicable to inland waters
- ◆ **HAR §11-54-6** Uses and specific criteria applicable to marine waters
- ◆ **HAR §11-54-7** Uses and specific criteria applicable to marine bottom types
- ◆ **HAR §11-54-8** Specific criteria for recreational areas



Conditionally Certified U.S. Army Corps of Engineers Nationwide Permits



Conditionally Certified DA Permits

◆ 16 Nationwide Permits (NWP)

Nos.: 3, 4, 5, 6, 12, 13, 14, 16, 18, 19, 22, 25,
31, 33, 36, 38

[File No. 200100500, Expires March 19, 2007]

[DOH File No. WQC 0000543, Expires on March 19, 2007]

◆ One (1) State Programmatic General Permits (SPGP)

[File No. SPGP 2001-01, Expires April 25, 2010]

[DOH File No. WQC 0000536, Expires on Feb. 1, 2008]



Conditionally Certified NWP's

- ◆ **NWP 3** Maintenance
- ◆ **NWP 4** Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- ◆ **NWP 5** Scientific Measurement Devices
- ◆ **NWP 6** Survey Activities



Conditionally Certified NWP

- ◆ **NWP 12** Utility Line Activities including construction, maintenance, or repair of utility lines (excluding outfall and intake structures) that cross State waters and the associated excavation, backfill, or bedding for the utility lines, provided there is no change in preconstruction contours. This WQC covers mechanized land clearing necessary for the installation of utility lines crossing State waters, including overhead utility lines, provided the cleared area is kept to the minimum necessary, preconstruction contours are maintained, and the Nationwide Permit permittee (Permittee) complies with requirements established for the storm water discharges associated with construction activities specified in HAR, Chapter 11-55, entitled "Water Pollution Control." However, access roads (temporary or permanent), utility line substations, foundations for overhead utility line towers, poles, and anchors are excluded from the WQC coverage for this Nationwide Permit.



Conditionally Certified NWP

- ◆ **NWP 13** Bank Stabilization (except for bank stabilization activities in excess of 500 feet in length, or greater than an average of one (1) cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line)
- ◆ **NWP 14** Linear Transportation Projects (except for linear transportation activities located in areas that will interfere or affect the existing or designated uses for the affected water body as specified in HAR, Section 11-54-1 and Section 11-54-3.)



Conditionally Certified NWP's

- ◆ **NWP 16** Return Water from Upland Contained Disposal Areas (except for discharging of dewatering effluent return flow from the dredged/excavated materials obtained from any contaminated or suspected to be contaminated area(s))
- ◆ **NWP 18** Minor Discharges (excluding the outfall and storm water culvert construction)
- ◆ **NWP 19** Minor Dredging (except for dredging in any contaminated or suspected to be contaminated area(s) or using mechanical equipment for dredging or excavation in any special aquatic site, including wetlands)



Conditionally Certified NWP's

- ◆ **NWP 22** Removal of Vessels
- ◆ **NWP 25** Structural Discharges
- ◆ **NWP 31** Maintenance of Existing Flood Control Projects
- ◆ **NWP 33** Temporary Construction, Access, and Dewatering



Conditionally Certified NWP's

- ◆ **NWP 36** Boat Ramps
- ◆ **NWP 38** Cleanup of Hazardous and Toxic Waste



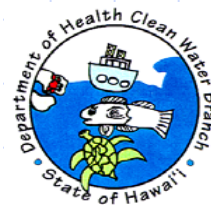
Conditional Blanket WQC

File No. WQC 0000543

- ◆ **Section 401 Water Quality Certification (WQC) for Certain Department of the Army Nationwide Permits Promulgated in the January 15, 2002, Federal Register Notices, Volume 67, No. 10, in the State of Hawaii**

File No. WQC 0000543, Expires March 19, 2007

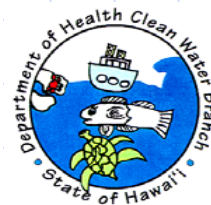
Army File No. 200100500, Expires March 19, 2007



File No. WQC 0000543

Validation

- ◆ Up to two (2) years from the issuance date of each individual verification letter issued by DOH, but no later than March 19, 2007.
- ◆ On a case-by-case basis the validation may be administratively extended by the Director
- ◆ Coverage may be modified or revoked by the Director



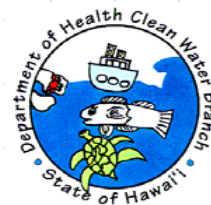
Conditionally Certified DA State Programmatic General Permit

◆ BEACH NOURISHMENT, RESTORATION AND ENHANCEMENT IN THE STATE OF HAWAII

Authorization under this SPGP allows the placement of up to 10,000 cubic yards of sand below the high tide line.

[File No. SPGP 2001-01, Expires April 24, 2010]

[<http://www.poh.usace.army.mil/news/PublicNotices.html>]



Conditional Blanket WQC

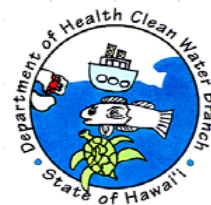
File No. WQC 0000536

◆ This WQC covers the placement of up to a maximum of 10,000 cubic yards (CY) beach sand of acceptable quality on sand beaches and/or in waters:

- (1) As a viable alternative to shoreline hardening/armoring; or
- (2) To nourish, restore, or enhance the existing sand beaches.

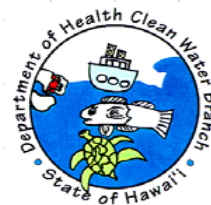
File No. WQC 0000536, Expires February 1, 2008

DA File No. SPGP 2001-01, Expires April 25, 2010



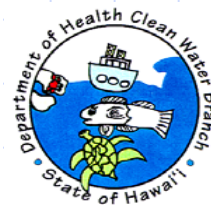
Certification Coverage Validation

- ◆ Up to one (1) year from the issuance date of each individual verification letter issued by DOH, but no later than February 1, 2008.
- ◆ On a case-by-case basis the validation may be administratively extended by the Director
- ◆ Coverage may be modified or revoked by the Director



Blanket Certification Coverage Extension

- ◆ Permittee submit a written request and demonstrates that:
 - (1) no significant changes to the project scope;
 - (2) changes will not, either individually or cumulatively, cause adverse impact to the receiving water quality; and
 - (3) the project is under construction and the purpose of extending the expiration date is to allow the contractor to complete the project construction. (Color photos required)



Certification Modification or Coverage Revocation

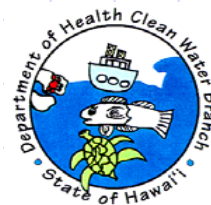
- ◆ Applicable water quality standards established before the activity is completed
- ◆ Violate of new water quality standards
- ◆ Violate or non-compliance with any existing water quality standards or condition(s) or requirement(s)
- ◆ Failure to disclose all relevant facts



Geographical Areas

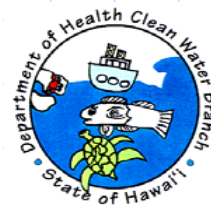
Not Applicable to the Blanket Certifications

- > Natural lakes and anchialine pools
- > Class 1 Inland Waters
- > Estuaries
- > Class AA Marine Waters
- > Embayments
- > Class I Marine Bottoms
- > CWA, 303(d) Listed Impaired Water Bodies



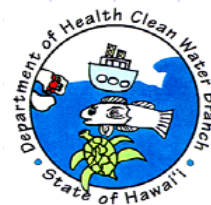
Blanket Certification Does not Cover

- ◆ After the fact permits
- ◆ Provisional permits
- ◆ Discharge Authorized Under Section 402 of the CWA (NPDES permit)
- ◆ Same NWP used more than once for a single and complete project
- ◆ Inconsistent with 11-54-1.1 or 11-54-3 of HAR
- ◆ When the Director finds that it is more appropriate to evaluate the project impacts under an individual application for a WQC



Blanket Certification Notification Requirements

- ◆ General information regarding the Owner(s), Contractor(s), Location (including TMKs and Coordinates), DA File number, Scope of Work, Quality and Quantity of the proposed discharges, Authorization of Representative
- ◆ Site-specific Best Management Practices Plan (including disturbed site restoration plan)
- ◆ Applicable Monitoring and Assessment Plan
- ◆ Mitigation/Compensation Plan (special aquatic site including wetland)
- ◆ Additional information

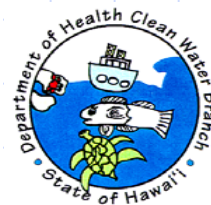


Application Requirements and Processing Procedures for Section 401 WQC

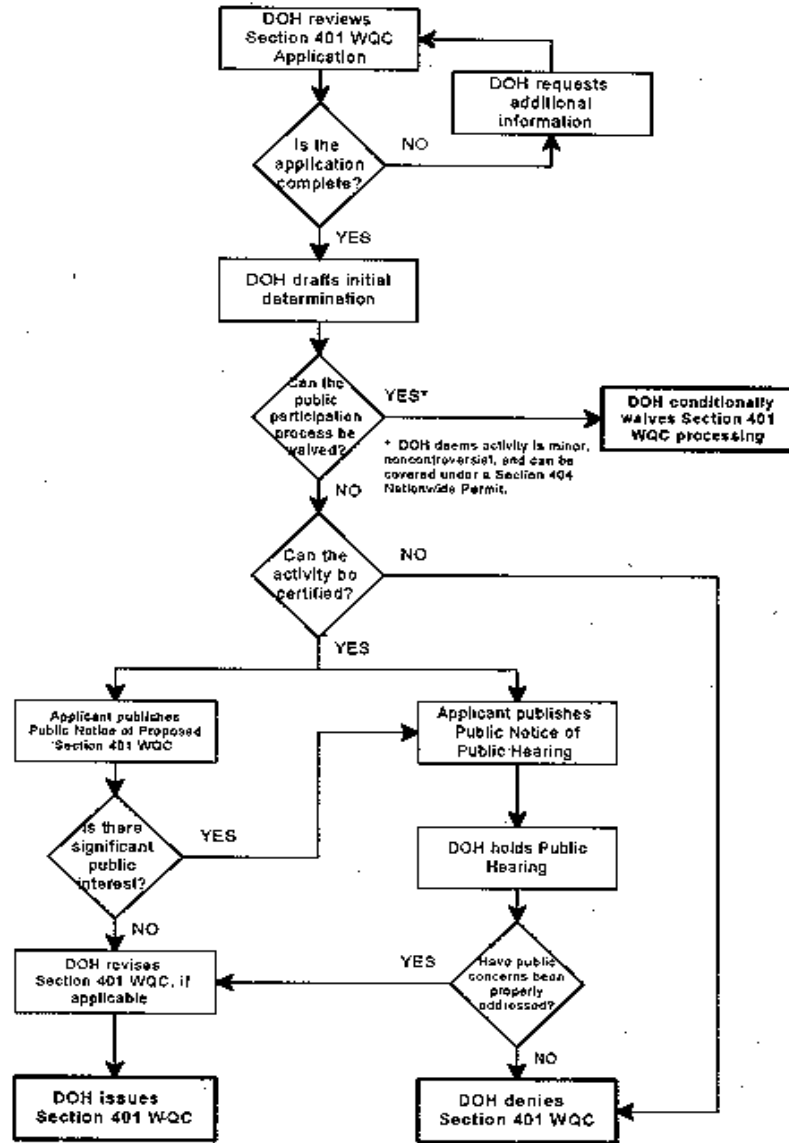


Application Review Process

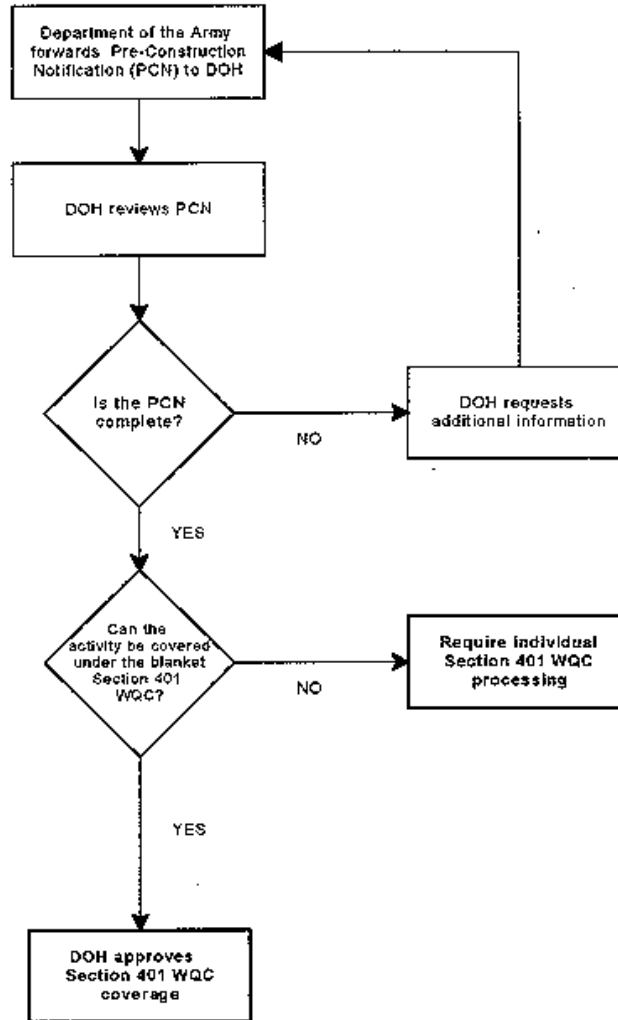
- ◆ Individual Certification Application:
Up to one year to process after receipt of a complete application
- ◆ Notification information for a blanket certification coverage for the Nationwide and General Permits:
Up to 30 days to review the information and render the determination



Section 401 Water Quality Certification Processing Flowchart



Section 401 Water Quality Certification (WQC)
Blanket Coverage Processing Flowchart



Filing Fee

- ◆ Notification (DA PCN) for Conditional Blanket Certification Coverage
No filing fee
- ◆ Individual Certification Application
\$1000 filing fee



August 31, 2004 Amendments to Water Quality Standards, Chapter 11-54

- ◆ Amended definitions:
 - ◆ Amend State waters definition
 - ◆ Add definition of “Existing Uses”
- ◆ Amended Antidegradation Policy
- ◆ Amended Recreational Water Quality Criteria
- ◆ Correct typographical errors



Proposed Revisions To WQS

<http://www.hawaii.gov/health/environmental/env-planning/index.html>



Recommendation

- ◆ Contact the Clean Water Branch as early as possible



Clean Water Branch

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