Section 401
Water Quality Certification

Department of Health
Environmental Management Division
Clean Water Branch
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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.
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.
(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)]
Water Quality Standards (WQS)

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- Designated Uses (Beneficial Uses)

- Water Quality Criteria
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)
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 NWPs

- 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 NWPs**

- **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 NWPs

- **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 NWPs

- **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 NWPs

- **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 NWPs

- **NWP 36**  Boat Ramps

- **NWP 38**  Cleanup of Hazardous and Toxic Waste
Conditional Blanket WQC
File No. WQC 0000543


File No. WQC 0000543, Expires March 19, 2007
Army File No. 200100500, Expires March 19, 2007
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 HAWAI'I

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]
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 (WQC)
Blanket Coverage Processing Flowchart

Department of the Army

Departmental Pre-Construction Notification (PCN) to DOH

DOH reviews PCN

Is the PCN complete?

NO

DOH requests additional information

YES

Can the activity be covered under the blanket Section 401 WQC?

NO

Require individual Section 401 WQC processing

YES

DOH approves Section 401 WQC coverage
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 Antidegradationation Policy

- Amended Recreational Water Quality Criteria

- Correct typographical errors
Proposed Revisions To WQS

Recommendation

Contact the Clean Water Branch as early as possible