

The background is a light blue gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

SECTION 401 WATER QUALITY CERTIFICATION APPLICATION PROCESS

DEPARTMENT OF HEALTH, CLEAN WATER BRANCH

APRIL 2017

SUMMARY

- Department of Health (DOH), Clean Water Branch (CWB).
- Hawaii's State Water Quality Standards (WQS).
- Section 401 Water Quality Certification (WQC).
 - What is a Section 401 WQC? When is it required? What is the purpose?
- Three Application Methods
 - Standard Section 401 WQC process.
 - Blanket Section 401 WQC process.
 - Streamlined Section 401 WQC process.
- Questions.

DEPARTMENT OF HEALTH (DOH), CLEAN WATER BRANCH (CWB)

- Administers Hawaii Administrative Rules (HAR), Chapter 11-54, State Water Quality Standards (WQS).
- Mission is to protect State waters for human health, marine life, and wildlife.
- Accomplished through permit/certification issuance, monitoring, enforcement, sponsorship of polluted runoff control projects, and public education.

HAWAII'S STATE WATER QUALITY STANDARDS (WQS)

- HAR, Chapter 11-54 (last amendment 11/15/2014).
 - Located on DOH-CWB website at:
http://health.hawaii.gov/cwb/files/2013/04/Clean_Water_Branch_HAR_11-54_20141115.pdf
 - Comprised of 3 main parts: Designated uses, water quality criteria, and antidegradation policy.
- Hawaii's law requires that no person or public body may discharge, cause, or allow any water pollutant into State waters except in compliance with WQS or a permit or variance issued by the DOH.

WHAT IS A SECTION 401 WQC?

- A WQS implementation tool.
- A certification from the State indicating that a proposed activity will comply with Water Quality Standards (Hawaii Administrative Rules, Chapter 11-54) and Clean Water Act (CWA) Sections 301, 302, 303, 306, and 307.

WHEN A SECTION 401 WQC IS REQUIRED?

- A Section 401 WQC is required if your project/activity:
 - 1) Requires a federal permit, license, certificate, approval, registration, or statutory exemption, and
 - 2) May result in a water pollutant discharge into State waters.
- Federal agencies (U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Federal Energy Regulatory Commission, U.S. Coast Guard Office of Bridge Programs, etc.)
- “Water pollutant discharge” is defined in HRS 342D-1 and HAR 11-54-1. It includes, but is not limited to, allowing the following pollutants to enter State waters: solid waste, sewage, chemicals, biological material, rock/sand/dirt, construction debris, fugitive dust, spray paint, industrial wastes, concrete, sealant, epoxy, heat, agricultural waste, and washing/cleaning effluent.

PURPOSE OF A SECTION 401 WQC

- To ensure that a polluter will not be able to hide behind a Federal license or permit and use it as an excuse for violating State WQS.
- Congress provided States with the power to enforce “any other appropriate requirement of State law” [33 U.S.C. 1341(d)] by imposing conditions on federal licenses for activities that may result in a discharge.

3 WAYS TO APPLY FOR A SECTION 401 WQC

1. Standard Section 401 WQC application.
2. Blanket Section 401 WQC.
3. Streamlined Section 401 WQC process.

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STANDARD SECTION 401 WQC APPLICATION

STANDARD SECTION 401 WQC APPLICATION

- Application available on ePermitting website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>
 - Click on Form Finder button.
 - Type “Section 401 WQC” in search field.
 - Download PDF form.

STANDARD SECTION 401 WQC APPLICATION

- Contact information for owner, general contractor, emergency contacts, and authorized representative.
- Associated permits or licenses you need for your project.
- Receiving water information.
- Project description, including discharge activities you are requesting coverage for under the WQC application.
- Project schedule.

STANDARD SECTION 401 WQC APPLICATION

- Antidegradation Analysis
 - Physical, chemical, biological, and thermal characteristics of the discharge activities.
 - Description of the existing and potential impacts to the physical, chemical, and biological environment.
 - Description of the existing uses of the affected State water and the potential impacts to these existing uses.

STANDARD SECTION 401 WQC APPLICATION

- Proposed Best Management Practices (BMPs) to ensure WQS will not be violated.
 - Isolation and confinement. Isolate the discharge activity and confine the pollutants within the work area.
 - Construction sequence. Sequence activity to minimize potential adverse impacts to State water.
 - Contingency plan.
- Proposed Applicable Monitoring and Assessment Plan (AMAP) to demonstrate your discharge activities are not violating WQS and to validate the effectiveness of the BMPs.

STANDARD SECTION 401 WQC APPLICATION

- Choice of public notification.
 - Public notice (with 30 day public comment period).
 - Public hearing (with hearing notice at least 30 days before hearing).
 - Request for waiver of public notice requirements.
 - Project covered by an Army Corps Nationwide Permit (NWP),
 - Discharge is minor due to your proposed BMPs,
 - Discharge is non-controversial, and
 - Your activity is not in a Class 1 or Class AA State water.

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**BLANKET
SECTION 401 WQC
NOTIFICATION FORM**

BLANKET SECTION 401 WQC NOTIFICATION FORM

- DOH-CWB issued WQC0804 that covers 7 of the most widely issued NWP's.
- All the terms and conditions have already been specified within WQC0804. No proposals are allowed.
- Anyone that needs Section 401 WQC coverage and who is willing to comply with all of the set terms and conditions may utilize WQC0804.
- Fill out ePermitting NWP Blanket WQC Notification Form. No filing fee. No public notification.

BLANKET SECTION 401 WQC NOTIFICATION FORM

- WQC0804 meant to cover projects that are “ready to go” and that will have minimum impact to State waters.
- Over a period of a year, 14 projects were covered under WQC0804. Average processing time was 1 week.

BLANKET SECTION 401 WQC NOTIFICATION FORM

- WQC0804 expired March 18, 2017.
- DOH-CWB is working on issuing another blanket Section 401 WQC for the 2017 NWP. Consideration is being made for comments/concerns we received on WQC0804.

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STREAMLINED SECTION 401 WQC PROCESS

STREAMLINED SECTION 401 WQC PROCESS

- Many of our applicants expressed concern over the current Section 401 WQC processing times (approximately 1 year on average).
- Although 1 year is the processing time allowed by the CWA, our government applicants needed the Section 401 WQC processed sooner so they can complete projects to benefit Hawaii.

STREAMLINED SECTION 401 WQC PROCESS

- DOH-CWB conducted a week long (September 14-18, 2015) Kaizen streamlining session facilitated by Peppers & Rogers, a consulting group experienced in streamlining functions in state government.
- There were 14 participants at this kaizen streamlining event from DOH-CWB, CCH-DDC, CCH-DFM, DLNR-DOBOR, DOT-AIR, DOT-HAR, DOT-HWYS, USACE, Parsons Brinckerhoff, and EPA Region 9.

STREAMLINED SECTION 401 WQC PROCESS

- Kaizen Discussion:
 - Kaizen streamlining concepts;
 - Section 401 WQC process;
 - Issues with current process;
 - Potential causes of long processing times; and
 - Streamlining recommendations targeting causes of long processing times.

STREAMLINED SECTION 401 WQC PROCESS

- Long processing times due to:
 - Lots of back and forth between DOH-CWB and applicants regarding proposed BMPs and monitoring plans.
 - Many applicants submitting WQC applications for different projects with similar activities, but were proposing different BMPs and monitoring plans. This resulted in DOH-CWB having to do project specific reviews for every application.
 - DOH-CWB reviewing each WQC application the same and imposing the same requirements regardless of the project size and potential impact to water quality.

STREAMLINED SECTION 401 WQC PROCESS

- Long processing times due to:
 - DOH-CWB having one reviewer for the entire state.
 - DOH-CWB reviewer spending a lot of time working with applicants who wanted to change their BMPs and monitoring plans after the Section 401 WQC was issued. An issued Section 401 WQC certifies specific activities, BMPs, and monitoring plans disclosed in application. Changing BMPs and monitoring plans after Section 401 WQC is issued requires DOH-CWB re-evaluate the project.

STREAMLINED SECTION 401 WQC PROCESS

- Kaizen group came up with streamlining recommendations that targeted potential causes of long processing times and ranked them by impact and implementation difficulty.
- DOH-CWB decided to implement a streamlining process based on combination of recommendations from Kaizen event.
 - Reduce back and forth of BMP and monitoring plan application proposals and detailed project reviews with every application by having applicants develop own standard operating procedures (SOPs).
 - Spend less time on smaller projects covered by Army Corps Nationwide Permits (NWP) so DOH-CWB can focus their limited resources on projects with greater potential to impact water quality.
 - Eliminate need for DOH-CWB to approve changes to BMPs and monitoring plans after Section 401 WQC issuance.

STREAMLINED SECTION 401 WQC PROCESS

- The Kaizen streamlined Section 401 WQC process is as follows:
 1. Applicant develops their own SOPs for activities they normally perform that require a Section 401 WQC. SOPs are required to comply with DOH's checklist requirements.
 2. Applicant completes DOH's checklist by referencing page or section numbers of their SOP in yellow highlighted cell that addresses the requirements.
 3. Applicant submits their SOPs, completed DOH checklist, and a transmittal letter signed by the Certifying Person that meets 40 CFR 122.22(a) requirements and certification paragraph.
 4. DOH-CWB reviews SOPs utilizing DOH's checklist requirements. Applicant will be notified of any comments/concerns from DOH-CWB.
 5. If DOH-CWB accepts Applicant's SOPs, DOH-CWB will inform Applicant in writing that their SOPs have been pre-approved for the Section 401 WQC Kaizen Streamlining Process for activities in pre-approved SOPs that are covered by NWP(s).
 6. Once SOP is pre-approved, it will be assigned a file number.
 7. Applicant with pre-approved SOP can contact DOH-CWB to revise SOP. If revised SOP is accepted, it will be assigned a new file number.

STREAMLINED SECTION 401 WQC DOH SOP CHECKLIST

DRAFT - Comments Due 9/30/16 at 4:30 pm via email at
darryl.lum@doh.hawaii.gov

Requirements to Obtain Pre-Approved Standard Operating Procedures (SOPs) to Use the Kaizen Streamlined Section 401 Water Quality Certification (WQC) Process

Instructions:

1. The Department of Health (DOH), Clean Water Branch (CWB) is implementing a streamlined Section 401 WQC process. The idea for this streamlined process came from a Kaizen event.
2. The Kaizen streamlined Section 401 WQC process is voluntary. Any private or public organization may choose to be a part of this streamlined process.
3. The Kaizen streamlined Section 401 WQC process is as follows:
 - a. The Section 401 WQC applicant (Applicant) develops their own SOPs for the activities they normally perform that require a Section 401 WQC. The SOPs are required to comply with the checklist requirements below. It is highly recommended that the Applicant considers the SOPs they utilized in the past that were approved in a previous Section 401 WQC.
 - b. The Applicant completes the checklist below to the DOH-CWB for review. To complete the checklist, reference the page or section numbers of your SOP in the yellow highlighted cell that addresses the requirements.
 - c. The Applicant submits their SOPs, the completed checklist, and a transmittal letter signed by the Certifying Person that meets 40 CFR 122.22(a) requirements and the following certification paragraph: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
 - d. DOH-CWB reviews the SOPs utilizing the checklist requirements below. The Applicant will be notified of any comments/concerns from the DOH-CWB.
 - e. If DOH-CWB accepts the Applicant's SOPs, DOH-CWB will inform the Applicant in writing that their SOPs have been pre-approved for the Section 401 WQC Kaizen Streamlining Process for the activities in the pre-approved SOPs.
 - f. Once a SOP is pre-approved, it will be assigned a file number.
 - g. The Applicant with a pre-approved SOP will be able to request a Section 401 WQC using the e-Permitting Kaizen Streamlined Section 401 WQC application if their project is covered by a U.S. Army Corps of Engineers (USACE) Nationwide Permit and the activity was included in the pre-approved SOPs. In this streamlined process, water quality monitoring is not required; submittal of a Best Management Practices (BMP) Plan is not required with the application; the application will not have antidegradation questions; and there will be no public notice or public hearing. Instead, the Applicant will be required to certify that they will comply with their pre-approved SOPs. Note: If the e-Permitting Kaizen Streamlined Section 401 WQC application is not released by the time an Applicant is ready to use a pre-approved SOP, the Applicant can contact the DOH-CWB for an alternative application form.
 - h. The Applicant with a pre-approved SOP will be able to request a Section 401 WQC using the Section 401 WQC Blanket Notification Form for 2012 NWP's and the future 2017 NWP's if their project qualifies for coverage under the blanket and the activity was included in the pre-approved SOPs.
 - i. An Applicant with a pre-approved SOP can contact the DOH-CWB to revise or modify their SOPs. If the DOH-CWB pre-approves the revision, a new file number will be assigned.

Checklist Requirements:

Complete the yellow highlighted cells by referencing the section of your proposed SOP that addresses the corresponding requirement.

No.	SOP Requirements	Explanation	SOP Section Reference	DOH-CWB Comments (For DOH-CWB Internal Use. Do Not Write In This Column.)
Design				
1	Planning and design requirements to assess and protect a water body's existing uses and the level of water quality necessary for the existing uses.	All projects/activities shall not adversely impact human uses of water bodies (e.g. fishing, surfing, scientific research, etc.). All projects/activities shall not adversely impact fish and other aquatic organisms (e.g. Oopu migration, no net habitat loss, etc.). Hawaii Administrative Rules (HAR), Chapter 11-54 requires the maintenance and protection of existing uses and the water quality to maintain the existing uses. Existing uses are all uses that have actually been attained in the receiving water body on or after November 28, 1975 whether or not they are included in HAR 11-54.		
2	Design requirements for the structure being built/installed to maintain or improve water quality (physical, chemical, biological, and thermal characteristics)	There shall be no adverse change to the physical, chemical (e.g. DO, temperature, pH, toxics will not be introduced, etc.); biological; and thermal characteristics of the receiving State water. Projects/activities must be designed so that the natural ecosystems of the receiving State water will be maintained or restored.		
3	Criteria for the project/activity design to consider restoring the natural function of a receiving water body.	This includes, but is not limited to, restoring natural riparian barriers, decreasing impervious surfaces, preventing hardening and/or the addition of concrete, prioritizing the use of native materials when applicable, improving aquatic habitats (i.e. use of natural stream rock that will act as habitat for different types aquatic animals), phasing to limit the amount of open/exposed area		
4	Design recommendations and options for the use of pollution reducing construction materials and methods			
5	Requirements for the design to consider and incorporate construction sequencing and phasing to limit the amount of open/vulnerable areas at any given time.	The goal is to include construction sequencing and phasing that will be protective of the environment in the design stage so that contractors can include it in their bid.		

STREAMLINED SECTION 401 WQC PROCESS

- DOH SOP Checklist
 - Purpose is to help you develop your SOPs.
 - DOH-CWB will use same checklist to review SOPs.
 - SOP requirements for:
 - Design – protection of existing uses, maintenance or improvement to water quality, considerations to restore natural function of receiving waterbody, considerations for construction sequencing;
 - Construction – specify activities and associated BMPs, BMP requirements, etc.;
 - Project specific in-water BMPs plan – describes what SOPs will be utilized and where for each project;
 - Administration – institutionalize SOPs in contract and bid packages, enforce SOP, inspections, and reporting.

STREAMLINED SECTION 401 WQC PROCESS

- Applicant develops their own SOPs for activities they normally perform that require a Section 401 WQC. SOPs are required to comply with DOH's checklist requirements.
- Applicant completes DOH checklist by referencing the page or section numbers of their SOP in the yellow highlighted cell that addresses the requirements.
- Applicant submits their SOPs, completed checklist, and a transmittal letter signed by the Certifying Person that meets 40 CFR 122.22(a) requirements and certification paragraph.

STREAMLINED SECTION 401 WQC PROCESS

- You may only utilize this streamlined process if:
 - Your project is covered under NWP(s); and
 - Your project activities are included in your pre-approved SOPs.
- Benefits of having pre-approved SOPs:
 - Water quality monitoring not required.
 - No BMP and monitoring plan submittals.
 - No antidegradation analysis submittals.
 - No public notice or public hearing.

STREAMLINED SECTION 401 WQC PROCESS

- Applicant with pre-approved SOP will be able to request a Section 401 WQC in 2 ways:
 1. e-Permitting Standard Section 401 WQC Application. Reference pre-approved SOPs in BMP and AMAP sections.
 2. Section 401 WQC Blanket Notification Form (when new blanket is issued) if project qualifies for coverage under the blanket.

STREAMLINED SECTION 401 WQC PROCESS

- DOT-HWYS and FHWA-CFL have a pre-approved SOP.
 - Used on 4 projects.
 - Average processing times were 1 month. Note: Streamlined process was still being developed when they submitted the applications.
 - Using these projects to test their pre-approved SOPs.
- CCH-DFM is working on SOPs for stream maintenance and stream mouth clearing activities.

SUMMARY OF 3 WAYS TO APPLY FOR A SECTION 401 WQC

Project requires federal permit or license and may result in water pollutant discharge to State waters.

Individual Section 401 WQC

Blanket Section 401 WQC
(Blanket for Certain 2012 NWP)

Section 401 WQC Form
(Regular Process)

Section 401 WQC
(Streamlined Process for
Organizations with Pre-Approved
SOPs and Activities Authorized
Under NWPs)

Blanket Notification Form

\$1000 filing fee; AMAP and BMP submittal required; public notice and/or hearing; for any federal permit or license.

\$1000 filing fee; no AMAP or BMP submittal; water quality testing not required; no public notice and/or hearing; for NWP authorizations only.

For Organizations That Do Not Have Pre-Approved SOPs:
No filing fee; AMAP and BMP submittal required; no public notice and/or hearing; for certain NWP authorizations only; 60 day maximum turn around time; 1 chance to address CWB comments.

For Organizations With Pre-Approved SOPs:
No filing fee; no AMAP and BMP submittal required; water quality testing not required; no public notice and/or hearing; for certain NWP authorizations only; 60 day maximum turn around time; 1 chance to address CWB comments.

QUESTIONS?

- Recommendations:
 - Start with activities for an upcoming project.
 - Look at Section 401 WQCs issued to your organization in the past. Look at the SOPs for these activities.
- Contact the DOH-CWB (586-4309) if you have questions on:
 - Section 401 WQCs.
 - Developing SOPs for your organization for use in the streamlined process.