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SECTION 401 WATER QUALITY CERTIFICATION BASICS

DEPARTMENT OF HEALTH, CLEAN WATER BRANCH

MARCH 2019

DISCLAIMER

Disclaimer: The material in this presentation has been prepared by the Department of Health (DOH), Clean Water Branch (CWB) and is general information as of the date of this presentation. This information is given in summary form and does not purport to be complete. This document does not substitute for any law or regulation. You are solely responsible for complying with the Clean Water Act (CWA), the Hawaii Revised Statutes (HRS), the Hawaii Administrative Rules (HAR), and the Blanket Section 401 Water Quality Certification (WQC) [File No. WQC0901].

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?
- Frequently Asked 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)

- 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 laws (HRS 342D) and rules (HAR Ch. 11-54 & 11-55) that regulate water pollution.
- HAR, Chapter 11-54 Water Quality Standards (amended 11/15/2014).
 - Designated uses, water quality criteria, and antidegradation.
- Located at:

http://health.hawaii.gov/cwb/files/2013/04/Clean_Water_Branch_HAR_11-54_20141115.pdf

WHAT IS A SECTION 401 WQC?

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

WHEN IS A SECTION 401 WQC 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 any discharge of a pollutant 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.)
- “Discharge of a pollutant” is defined in CWA 502(12) and HAR 11-54-9.1. Pollutants include: 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 owners of projects with Federal permits do not use those permits to disregard their responsibilities in preventing pollution to State waterbodies .
- This is the reason that Congress provided States with 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.

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FREQUENTLY ASKED QUESTIONS

I HAVE A USACE (ARMY CORPS OF ENGINEERS) SECTION 404 PERMIT AND MY ACTIVITY WILL DISCHARGE POLLUTANTS INTO A STREAM DURING THE “DRY” SEASON WHEN THERE IS NO WATER IN THE STREAM, SO I CANNOT POLLUTE THE WATER. DO I NEED A WQC?

- **WE USE THE TERMS “RECEIVING WATER,” “RECEIVING STATE WATER,” “STATE RECEIVING WATER,” “SURFACE WATER,” ETC. TO MEAN “STATE WATERS” AS DEFINED IN STATUTES AND RULES. STATE WATERS INCLUDE INTERMITTENT STREAMS THAT MAY NOT HAVE WATER PRESENT YEAR ROUND. POLLUTANT DISCHARGE INTO A DRY, INTERMITTENT STREAM IS CONSIDERED DISCHARGE INTO A STATE WATER. IN THIS CASE, SINCE THE TWO CRITERIA REQUIRING A WQC ARE MET, A WQC IS REQUIRED.**

DO I NEED A USACE (ARMY CORPS OF ENGINEERS) PERMIT FOR CONSTRUCTION ACTIVITY ON MY MS4 (MUNICIPAL SEPARATE STORM SEWER SYSTEM) THAT IS IN THE WATERS OF THE U.S. IF I ALREADY HAVE AN NPDES (NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM) PERMIT FOR MY MS4?

- **MAYBE. YOU NEED TO CONTACT THE USACE TO DETERMINE WHETHER YOUR PROPOSED ACTIVITY NEEDS A PERMIT. IF YOU DO AND YOUR PROJECT MIGHT DISCHARGE POLLUTANTS TO A SURFACE WATER, YOU WILL ALSO NEED A WQC.**
- **NPDES PERMITS DO NOT AUTHORIZE THE CONSTRUCTION ACTIVITY. NPDES PERMITS ONLY AUTHORIZE DISCHARGES ASSOCIATED WITH A CONSTRUCTION ACTIVITY.**

**IF THE USACE DETERMINES THERE IS
NO PERMIT REQUIRED, IS A WQC REQUIRED?**

**NO. A WQC IS ONLY REQUIRED WHEN A FEDERAL PERMIT
OR LICENSE IS REQUIRED AND THE ACTIVITY MAY RESULT
IN A WATER POLLUTANT DISCHARGE.**

**IF THE USACE DETERMINES THERE IS NO PERMIT
REQUIRED DUE TO A SECTION 404 EXEMPTION,
IS A WQC REQUIRED?**

**YES. A WQC IS REQUIRED WHEN A FEDERAL PERMIT OR LICENSE IS REQUIRED
AND THE ACTIVITY MAY RESULT IN A WATER POLLUTANT DISCHARGE.**


**FEDERAL PERMIT OR LICENSE IS DEFINED AS “ANY PERMIT, CERTIFICATE, APPROVAL,
REGISTRATION, CHARTER, MEMBERSHIP, STATUTORY EXEMPTION OR OTHER FORM
OF PERMISSION GRANTED BY AN AGENCY OF THE FEDERAL GOVERNMENT TO
CONDUCT ANY ACTIVITY WHICH MAY RESULT IN ANY DISCHARGE INTO NAVIGABLE
WATERS” IN HAR, §11-54-9.1.**



**IF I AM USING FRESH WATER TO FILL AN AQUADAM THAT
WILL BE USED AS A BMP, WHAT WILL HAPPEN TO ME IF
THERE IS A LEAK?**

FIRST, IF POSSIBLE, STOP AND FIX THE LEAK.

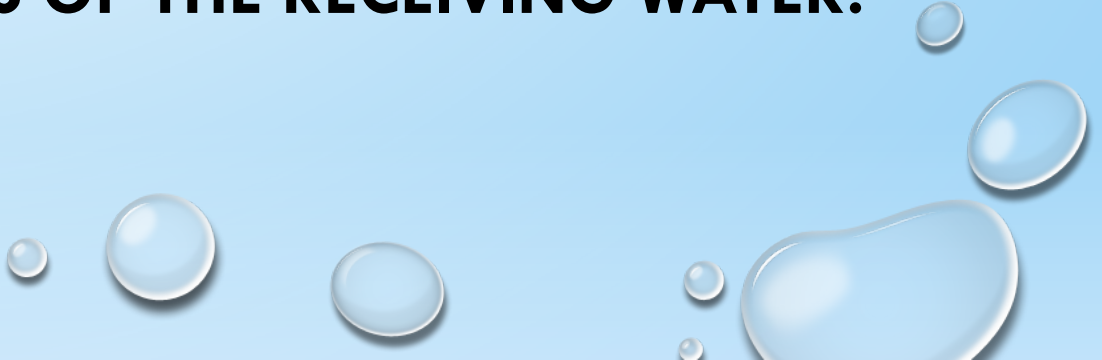
**IN GENERAL, NO ACTION WILL BE TAKEN AGAINST YOU FOR THE
WATER THAT LEAKED FROM THE AQUADAM IF THE REPAIRS AND
REPORTING OF THE ISSUE VIA THE E-PERMITTING WQC COMPLIANCE
FORM WERE DONE IN TIMELY MANNER.**





WHAT DO I DO WITH THE WATER IN THE AQUADAM WHEN I'M FINISHED WITH MY PROJECT?

FIRST, CONSIDER UPLAND DISPOSAL VIA PERCOLATION OR EVAPORATION. IF YOU WANT TO RELEASE THE WATER BACK INTO THE RECEIVING STATE WATER, YOU NEED ENSURE THAT THE DISSOLVED OXYGEN AND PH OF THE WATER IN THE AQUADAM MEETS THE WATER QUALITY STANDARDS OF THE RECEIVING WATER.



I AM THE OWNER OF A PROJECT AND WAS ISSUED A WQC. HOW DOES MY CONTRACTOR AND STAFF KNOW WHAT TO DO?

YOU MUST TELL THEM. IT IS YOUR RESPONSIBILITY AND NO ONE ELSE. WHEN YOU SUBMIT YOUR WQC APPLICATION TO THE CWB, YOU ARE CERTIFYING UNDER PENALTY OF LAW THAT YOU ARE GOING TO PERFORM THE WORK, IMPLEMENT THE BMPS, AND CONDUCT THE MONITORING AS SPECIFIED IN YOUR APPLICATION.


(CONT'D)

IF YOU ARE GOING TO USE A CONTRACTOR, YOU NEED TO INCLUDE IN YOUR CONTRACT, EVERYTHING THAT WAS PROVIDED TO THE CWB IN THE APPLICATION PLUS THE WQC. YOU CANNOT OBTAIN A CONTRACTOR THEN TELL THEM TO CONTACT THE CWB TO FIND OUT WHAT IS NEEDED. YOU NEED TO PROVIDE THE WQC AND YOUR APPLICATION TO YOUR CONTRACTOR AND ALL OF YOUR STAFF. YOU HAVE TO INSTRUCT THEM TO COMPLY WITH THE WQC CONDITIONS AND WHAT YOU SUBMITTED IN THE APPLICATION.



**I AM A CONTRACTOR, HOW DO I KNOW WHAT IS
REQUIRED IN THE WQC?**

**OBTAIN FROM YOUR CLIENT A COPY OF THE VALID WQC
APPLICATION AND THE ISSUED WQC FOR YOUR PROJECT.
READ THE WQC AND THE APPLICATION THAT WAS SUBMITTED
TO THE CWB. THE INFORMATION PROVIDED TO THE CWB IN
THE APPLICATION ARE THE COMMITMENTS THAT WERE MADE.**





I WAS ISSUED A WQC AND WANT TO CHANGE THE BMPS AND MONITORING. HOW DO I GO ABOUT DOING THIS?


THE ACCEPTED BMPS AND MONITORING MUST BE DEMONSTRATED AS INEFFECTIVE OR INADEQUATE BEFORE CONSIDERING CHANGES TO THEM.






WHAT TYPE OF FILL MATERIAL DOES CWB REQUIRE?

CLEAN, INERT MATERIAL THAT WILL COMPLY WITH BASIC WATER QUALITY CRITERIA APPLICABLE TO ALL WATERS AS ESTABLISHED IN HAR, 11-54-4(a), THAT WILL NOT LEACH POLLUTANTS AND WILL NOT CAUSE LONG-TERM WATER POLLUTION ISSUES. THE FILL MATERIAL ALSO NEEDS TO BE AUTHORIZED BY THE USACE.




WHAT IS COVERED UNDER THE 404, WQC, AND CONSTRUCTION STORM WATER NPDES?

- **THE 404 AUTHORIZES DREDGED OR FILL MATERIAL IN WATERS OF THE US.**
- **THE WQC CERTIFIES THAT DISCHARGES RESULTING FROM THE WORK COVERED UNDER THE 404 WILL COMPLY WITH THE WQS.**
- **THE CONSTRUCTION STORM WATER NPDES IS REQUIRED WHEN THERE IS LAND DISTURBANCE OF 1 ACRE OR MORE (OUTSIDE OF THE USACE CWA, SECTION 404 JURISDICTION).**
- **IF THERE IS AN NPDES PERMIT, THE WQC DEFERS THE LAND POLLUTION CONTROL TO THE NPDES. IF THERE IS NO NPDES, THE WQC EVALUATES THE ENTIRE IMPACTS FROM THE PROPOSED ACTIVITY INCLUDING CONSTRUCTION AND OPERATION.**



**WHAT PERCENT DESIGN CONSTRUCTION DRAWINGS IS
SUFFICIENT FOR WQC APPLICATIONS?**

**IT IS UP TO THE PROJECT OWNER. THE WQC WILL ONLY
COVER THOSE POLLUTANT DISCHARGES AND ACTIVITIES
PROVIDED IN THE APPLICATION.**



MY DESIGN IS DONE, BUT MY CONTRACTOR WAS NOT SELECTED AND I NEED TO APPLY FOR MY WQC BEFORE I GO OUT TO BID. THERE COULD BE 5 DIFFERENT WAYS THAT THE CONTRACTOR WILL DO THE WORK. I WON'T KNOW WHICH WAY UNTIL THE CONTRACTOR IS SELECTED. WHAT CAN I DO?

IT IS UP TO THE PROJECT OWNER. THE WQC WILL ONLY COVER THOSE POLLUTANT DISCHARGES AND ACTIVITIES PROVIDED IN THE APPLICATION.

IN YOUR WQC APPLICATION, YOU COULD CLEARLY IDENTIFY THESE FIVE (5) DIFFERENT METHODS AND PROVIDE THE INFORMATION, BMPS, AND MONITORING FOR EACH METHOD SEPARATELY. WHEN THE CONTRACTOR IS SELECTED, THE CONTRACTOR CAN PICK ONE OF THE SUBMITTED METHODS. THE WQC IS A CERTIFICATION, NOT A PERMIT. IT IS CERTIFYING THE INFORMATION DISCLOSED. YOU CANNOT SUBMIT INFORMATION AFTER-THE-FACT AND EXPECT THAT TO BE CERTIFIED.

THE WQC STREAMLINED PROCESS CAN ADDRESS SITUATIONS LIKE THIS.

WHAT IF I NEED A WQC FOR EMERGENCY WORK?

IF THE PROPOSED PROJECT WAS GRANTED AN EMERGENCY PROCLAMATION BY THE GOVERNOR SUSPENDING HAWAII REVISED STATUTES (HRS) CHAPTER 342D, YOU DO NOT NEED TO OBTAIN AN NPDES PERMIT OR WQC. HOWEVER, WE RECOMMEND THAT YOU APPLY APPROPRIATE BMPS.

WHAT IS THE CERTIFYING PERSON?

CERTIFYING PERSON IS THE PERSON WHO SIGNS THE SECTION 401 WQC APPLICATION. USUALLY IT IS THE OWNER OF THE PROPOSED PROJECT. PURSUANT TO HAR SECTION 11-54-9.1.02(a)(10), ANY SIGNATURES REQUIRED FOR THE WATER QUALITY CERTIFICATION APPLICATION SHALL BE PROVIDED AS DESCRIBED IN (FEDERAL REGULATION) 40 CFR SECTION 122.22(a).


**WHAT IS THE DULY AUTHORIZED REPRESENTATIVE
(i.e. DULY AUTHORIZED REP OR AUTHORIZED REP) ?**

THE DULY AUTHORIZED REPRESENTATIVE MAY SIGN FOR MOST COMPLIANCE SUBMITTALS. THE DULY AUTHORIZED REP HAS THE SAME LIABILITY AS THE CERTIFYING PERSON, THEREFORE, CONSULTANTS AND CM'S SHOULD THINK LONG AND HARD AND CHECK WITH THEIR INSURANCE COMPANIES ABOUT WANTING TO BE A DULY AUTHORIZED REP.



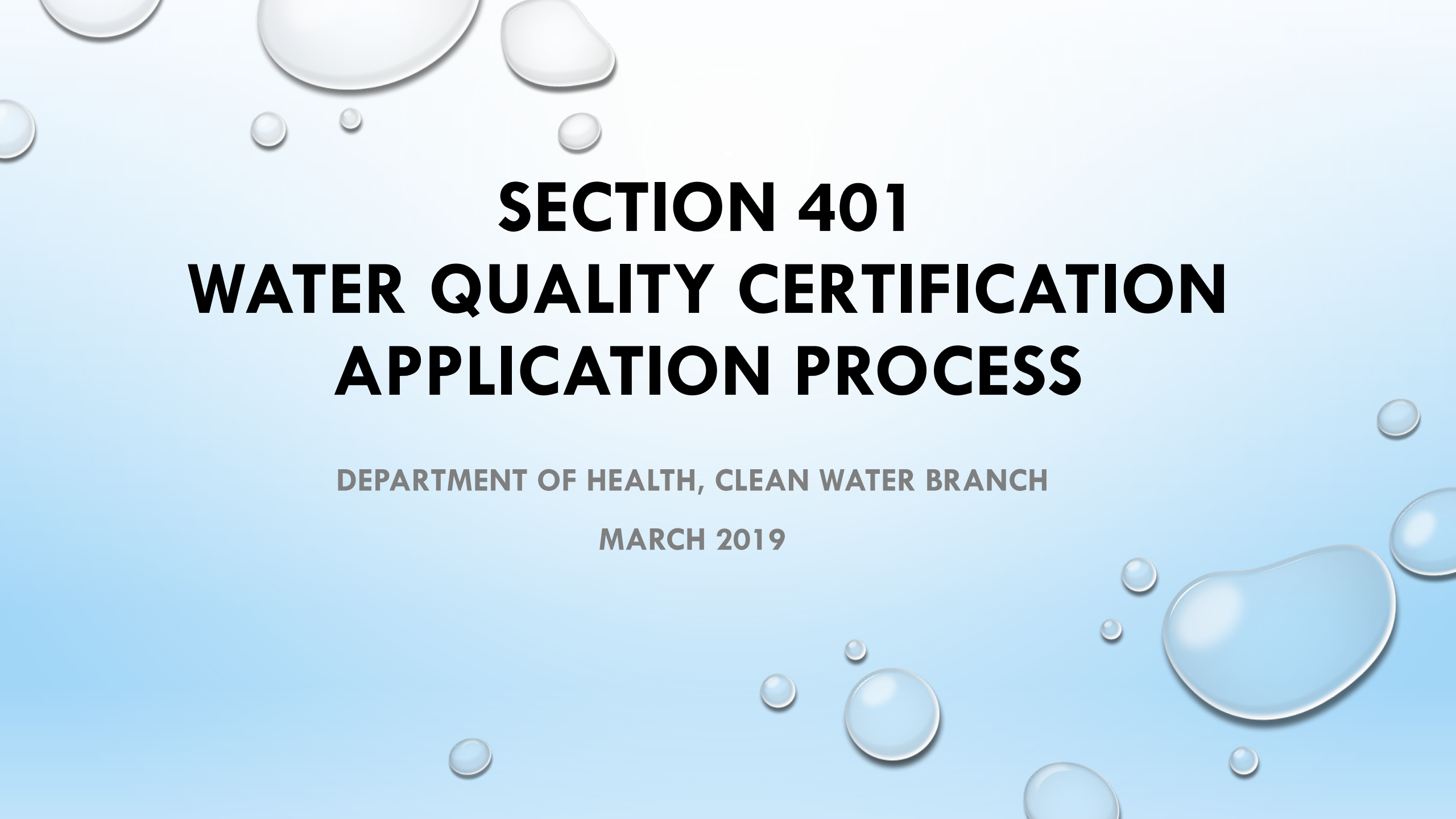
HOW DO I SUBMIT WQC COMPLIANCE INFORMATION?

PLEASE GO TO THE CWB'S E-PERMITTING WEBSITE AND USE THE "CWB COMPLIANCE SUBMITTAL FORM FOR SECTION 401 WQCS" FOR ALL WQC COMPLIANCE SUBMITTALS.



**I HAVE A USACE CIVIL WORKS PROJECT INVOLVING
DREDGING AND PLACING FILL MATERIAL INTO WATER OF
THE US. I WAS TOLD THAT THE USACE DOES NOT ISSUE
PERMITS FOR ITS OWN ACTIVITIES. DO I NEED A SECTION
401 WQC.**

YES. SEE 33 CFR 336.1.

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SECTION 401 WATER QUALITY CERTIFICATION APPLICATION PROCESS

DEPARTMENT OF HEALTH, CLEAN WATER BRANCH

MARCH 2019

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SUMMARY

- Two (2) WQC Application Methods
 - Standard Section 401 WQC Application.
 - Blanket Section 401 WQC Notification.
- Streamlined Section 401 WQC process.
- Common Errors in Section 401 WQC Applications.



2 WAYS TO APPLY FOR A SECTION 401 WQC

1. Standard Section 401 WQC Application.
 2. Blanket Section 401 WQC Notification.
- 

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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.
 - Select the “CWB Individual Section 401 WQC Form”
 - Online form and submission
 - Hardcopy submission with CD

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.
 - Site Restoration 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.
- Proposed compensatory/mitigation measures, if applicable.

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**BLANKET
SECTION 401 WQC
NOTIFICATION FORM**

BLANKET SECTION 401 WQC NOTIFICATION FORM

- DOH-CWB issued WQC0901 that covers 7 of the most widely issued NWP's (3, 5, 6, 10, 12, 13, 14)
- All the terms and conditions have already been specified within WQC0901. 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 WQC0901.
- Fill out ePermitting NWP Blanket WQC Notification Form. No filing fee. No public notification.

BLANKET SECTION 401 WQC NOTIFICATION FORM

- WQC0901 meant to cover projects that are “ready to go” and that will have minimum impact to State waters.
- 24 projects have been covered under WQC0901. Average processing time was 1 week.

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STREAMLINED SECTION 401 WQC PROCESS

STREAMLINED SECTION 401 WQC PROCESS

- Even though the Blanket WQC had been implemented, there was still difficulty for applicants in preparing WQC's.
- Using a method termed Kaizen an approach to further improve and expedite WQC processing was formed called the Streamlined Section 401 WQC Process or Streamlined Process.
- The Streamlined Process is not in itself a method to obtain WQC coverage, but expedites the most time-consuming portion of obtaining a WQC

STREAMLINED SECTION 401 WQC PROCESS

- Several streamlining recommendations were developed 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 activities are included in your pre-approved SOPs.
- Benefits of having pre-approved SOPs:
 - Monitoring requirements are part of the approved SOP's.
 - No detailed BMP and monitoring plan submittals when applying for WQCs.
 - No antidegradation analysis submittals when applying for WQCs.

STREAMLINED SECTION 401 WQC PROCESS

- Applicant with pre-approved SOP will be able to request a Section 401 WQC in 2 ways:
 1. Standard Section 401 WQC Application. Reference pre-approved SOPs in BMP and AMAP sections.
 2. Section 401 WQC Blanket Notification Form 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 has a pre-approved SOP and have been issued a WQC for stream maintenance for the majority of streams in their jurisdiction.

STREAMLINED SECTION 401 WQC PROCESS

The SOP manuals are considered “living documents” and are meant to be revised, modified, improved, and amended as BMPs and methods change and grow. Also, lessons learned from actual project conditions and circumstances may be incorporated into revisions of the manuals.

SUMMARY OF APPLYING FOR 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 EZ Form
(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.

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COMMON ERRORS IN WQC APPLICATIONS

ERROR 1

Applications not signed by the Certifying Person.

Applications must be signed by the certifying person listed on the application.

Revised applications may be signed by the Duly Authorized Representative only if the original application was signed by the correct Certifying Person.

ERROR 2

Information contained in the WQC Application/Blanket Notification is inconsistent with what is contained in the USACE permit Application/PCN.

- Quantity of fill not the same.
- Modification to either USACE or WQC Application is not reflected in the other.

ERROR 3

Not all water pollutants are included in the WQC Application/Blanket Notification

The WQC Application requires identification of all potential water pollutants, not just the dredged or fill material reported on the USACE application. This includes pollutants that come from demolition work that may enter the receiving water such as rubble; concrete chip, dust, or saw-cutting effluent, paint, rebar, metal, rust, soil, silt, chemicals, etc. [see CWA, Sec. 502(6) and HRS 342D-1]

ERROR 4

The proposed Applicable Monitoring and Assessment Plan (AMAP) is not designed appropriately to provide representative data to demonstrate that the BMP's are working.

- Sampling location or decision unit(s) not appropriately defined.
- Sampling location or decision unit(s) not close enough to BMP.
(Unless factors prevent it, should be within 1 meter of the BMP for impact.)

QUESTIONS?

- 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.
- Clean Water Branch website: <http://health.hawaii.gov/cwb/>