SECTION 401
WATER QUALITY CERTIFICATION (WQC)

AUGUST 2019
DISCLAIMER

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CWA SECTION 401 WQC

Clean Water Act (CWA) §401 provides:

• No federal permit or license can be issued that may result in a discharge to waters of the United States

Unless:

• The state or authorized tribe certifies that the discharge is consistent with water quality requirements or waives certification
WHERE CAN I LOCATE RULES GOVERNING WQC APPLICATION PROCESSING?

• Section 401 WQC rules are in Hawaii Administrative Rules (HAR), §11-54-9.1.

• Anyone requesting a Section 401 WQC are required to read and comply with HAR, Ch. 11-54, including HAR, § 11-54-9.1.
WHAT IS A SECTION 401 WQC?

A statement that asserts that a proposed discharge/activity will not violate applicable State Water Quality Standards (WQS) in Hawaii Administrative Rules (HAR), Chapter 11-54 and Clean Water Act (CWA) Sections 301, 302, 303, 306, and 307.

A Section 401 WQC is not a permit. It is the pre-requisite to the Federal license or permit that may result in any discharge of water pollutant to State waters. It does not authorize you to perform in-water work activity.
WHEN DO I NEED A SECTION 401 WQC?

• A Section 401 WQC is required before the commencement of your project/activity 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” is defined in HRS 342D-1 and HAR 11-54-1. It means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.
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 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.
SECTION 401 WQC APPLICATION
When a project requires a federal license or permit (e.g. DA Section 404 permit or Section 10) and the project may result in a water pollutant discharge as defined in HRS 342D-1, the discharger needs to request a Section 401 WQC by completing the Section 401 WQC application.

The discharger is required to disclose the following in the Section 401 WQC application:

- The entire project scope (construction and post construction), including activities on land and in-water that may result in direct and/or indirect discharges to State waters.
- All potential physical, chemical, biological, and thermal impacts resulting from the proposed project.
- All potential impacts to designated and existing uses.
SECTION 401 WQC APPLICATION AND WQS

- Best Management Practices (BMPs) required to protect designated uses, water quality criteria, and Antidegradation Policy requirements. These BMPs include the specific construction method, the construction sequence, the quantity and quality of the temporary and permanent materials that will be placed in State waters and all pollutant discharges to State waters.

- Applicable Monitoring and Assessment Plan (AMAP) to demonstrate specific BMPs are working, no adverse impact to State waters and WQS are being complied with.
2 WAYS TO APPLY FOR A SECTION 401 WQC

1. Standard Section 401 WQC Application.
2. Blanket Section 401 WQC Notification.
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
- Submit the required filing fee of $1000 with the completed application.
BLANKET SECTION 401 WQC NOTIFICATION FORM

- DOH-CWB issued WQC0901 that covers 7 of the most widely issued NWPs (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.
• WQC0901 meant to cover projects that are “ready to go” and that will have minimum impact to State waters.

• More than 33 projects have been covered under WQC0901. Average processing time was 1 week.
STREAMLINED SECTION 401 WQC PROCESS
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• 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

- 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 (NWPs) 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.
The Kaizen streamlined Section 401 WQC process is as follows:

- Applicant develops their own SOPs for activities they normally perform that require a Section 401 WQC. Developing your SOPs that will comply with DOH’s checklist requirements.
- Applicant completes DOH’s checklist by referencing page or section numbers of their SOP in yellow highlighted cell that addresses the requirements.
- 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.
- DOH-CWB reviews SOPs utilizing DOH’s checklist requirements. Applicant will be notified of any comments/concerns from DOH-CWB.
STREAMLINED SECTION 401 WQC PROCESS

• 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).

• Once SOP is pre-approved, it will be assigned a file number.

• 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 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

• 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.
STREAMLINED SECTION 401 WQC PROCESS

- DOH has prepared a SOP Checklist to help you develop your SOPs.
- If you are interested in preparing your agency/company SOPs, please contact DOH-CWB Engineering Section directly.
QUESTIONS?

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