

401 Water Quality Certifications

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R. 61-101, Water Quality Certification



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- Regulations promulgated in accordance with Section 401 of the Clean Water Act
- Requires that the State issue certification for any activity that requires a Federal permit and may result in a discharge to State waters.
- These are certification of Federal permits and are not stand alone permits.

What Federal Permits Require a 401 Certification?

- US Army Corps of Engineers (Corps) 404 permits
- Some Corps permits issued under Section 10 of the Rivers and Harbors Act of 1899
- Hydroelectric Facility licenses issued by the Federal Energy Regulatory Commission (FERC)
- US Coast Guard permits

Typical Activities Requiring a Water Quality Permit or Certification

- Filling Wetlands
- Dredging
- Community Docks
- Impoundments
- Marinas, etc.



401 Water Quality Certification Process

- Joint application with the Corps
- No separate application to DHEC
- Corps issues the public notice which serves as application to DHEC
- Outside of the coastal zone only a DHEC 401 certification is required

Water Quality Standards and 401 Water Quality Certification

- DHEC must certify that there is a reasonable assurance that the activity will not violate water quality standards or eliminate existing or classified uses.
- The Federal permit cannot be issued if certification is denied.

Scope of Review for 401 Certifications

- 61-101.F.3.c.

- ◆ All potential water quality impacts of the project, both direct and indirect, over the life of the project including:
 - ◆ Impact on existing and classified water uses;
 - ◆ Physical, chemical, and biological impacts, including cumulative impacts;

Scope of Review for 401 Certifications

- 61-101.F.3.c.
 - ◆ The effect on circulation patterns and water movement;
 - ◆ The cumulative impacts of the proposed activity and reasonably foreseeable similar activities of the applicant and others.

Typical “ingredients” for 401

- Alternative analysis
- Elimination or minimization of impacts
- Off-site and on-site evaluation
- “Special” resource waterbodies or areas (i.e., ORW, SFH, impaired waters)
- Drainage impacts to surrounding waters
- Low Impact Development techniques
- Mitigation for unavoidable impacts



Questions?

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