

State of Colorado

Water Quality Certification

fulfilling the requirements of
Clean Water Act Section 401



Colorado Department
of Public Health
and Environment

Introduction: The Colorado Water Quality Control Division (WQCD) reviews and issues Water Quality Certifications under Section 401 of the federal Clean Water Act (CWA) for projects or actions that are applicable to the provisions of the Colorado 401 Certification Regulation (WQCC Regulation #82: 5 CCR 1002-82). A CWA §401 Water Quality Certification is required for any federal license or permit that is issued to construct or operate a facility, which may result in any fill or discharge into the navigable waters of the United States.

Required Submittals: Revisions to Section 82.4 of the Regulation require the applicant to submit to the WQCD:

- Copy of the CWA Section 404 Permit Application.
- Project site plan.
- List or description of the Best Management Practices (BMPs) associated with the project: Depending on the type of project involved, BMPs can be either design features or construction specifications. State certification will not proceed without submittal of these items.

Certification Process: The WQCD certification process involves the following steps:

1. Preliminary review of proposed project.
2. Public notice (30 days)
3. Review of public comments.
4. Final water quality certification decision for proposed project.

Nationwide CWA §404 Permits: Under the Colorado 401 Certification Regulation, all nationwide permits are certified by statute and do not require a certification by the WQCD. Applicants for Nationwide Permits do not need to submit any information or documents to the WQCD.

Individual CWA §404 Permits: The following is a summary of the major requirements that shall apply to all water quality certifications for individual permits or licenses. For a complete list of requirements, please refer to regulation (WQCC Regulation #82: 5 CCR 1002-82).

- Discharges of dredged or fill material in excess of that which is necessary to complete the project are not permitted.
- Discharges to state waters not identified in the license or permit and not certified in accordance therewith are not allowed, subject to the terms of any 401 certification.
- The project shall incorporate BMPs into the project to assure compliance with the Clean Water Act and any other conditions placed in the permit or certification. All such provisions shall be identified and compiled in an operation and maintenance plan which will be retained by the project owner and made available for inspection within a reasonable timeframe upon request by any authorized representative of the Division. Authorized representatives from the Division shall be permitted to enter upon the site for inspection purposes.

- Construction operations within watercourses and water bodies shall be restricted to only those project areas specified in the federal license or permit. No construction equipment shall be operated below the existing water surface unless specifically authorized by the 401 water quality certification issued by the Division.
- The permittee shall notify the Division immediately upon discovery that certification conditions are not being implemented as designed, or if there is an exceedences of any water quality standards.
- The Division shall be notified immediately upon discovery of any spill or other discharge to waters of the state not authorized by the applicable license or permit.
- In the event of any changes in control or ownership of facilities where the construction activity or operation of the project is taking place, the successor shall be notified in writing by his predecessor of the existence of the BMPs and certification conditions. A copy of such notification shall be provided to the Division.
- The use of chemicals during construction and operation shall be in accordance with the manufacturers' specifications.
- All solids, sludges, dredged or stockpiled materials and all fuels, lubricants, or other toxic materials shall be controlled in a manner so as to prevent such materials from entering state waters.
- All seed, mulching material and straw used in the project shall be state-certified weed-free.

For More Information on Colorado Water Quality Certifications: Additional information, including the Colorado 401 Certification Regulation can be found on the internet at: www.cdphe.state.co.us. For additional information or questions please contact the WQCD representative:

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