

WATER QUALITY CERTIFICATION
for
DISCHARGES OF DREDGED OR FILL MATERIALS
Under CWA Section 401

Note: This information may not apply to hydroelectric projects seeking Federal Energy Regulatory Commission licenses or license amendments or to projects needing a State water rights permit.

QUESTIONS AND ANSWERS

Q: What is Water Quality Certification?

A: Under federal Clean Water Act (CWA) section 401 every applicant for a federal permit or license for any activity which may result in a discharge to a water body must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards. Most Certifications are issued in connection with U.S. Army Corps of Engineer (Corps) CWA section 404 permits for dredge and fill discharges.

Q: What Are Water Quality Standards?

A: Water quality standards include:

1. *Beneficial Uses* - uses of water for drinking, agriculture, navigation, recreation, and fish and wildlife habitat;
2. *Objectives* - numeric and narrative limits on water characteristics or bans on substances, which affect water quality.); and
3. *Anti-Degradation Policy*, which requires that existing high-quality waters be protected and maintained.

Regional Water Quality Control Boards (Regional Boards) maintain Water Quality Control Plans (Basin Plans) for each major hydrologic basin in California. The Basin Plans list the of water bodies in each region and describe the applicable water quality standards.

Q: **Who Needs Certification?** What types of projects require Certification?

A: Most projects requiring Certification fall into two categories:

1. Projects involving discharges of dredged or fill material to waters of the United States including wetlands and other water bodies. Such discharges may result from navigational dredging, flood control channelization, levee construction, channel clearing, fill of wetlands for development, or other activities. These projects involve the removal or placement of soil, sediment, and other materials in or near water bodies and require Corps permits under CWA Section 404. This information sheet concerns this category of activities.
2. Projects involving construction of hydroelectric dams, power plants, and other facilities requiring Federal Energy Regulatory Commission (FERC) licenses and projects which must secure a State water rights permit. These projects are reviewed for certification by the State Board. For more information on certification of projects seeking FERC licenses and water rights permits, contact:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
916/341-5300 (information)
916/341-5308 (certification team leader)

THIS PAMPHLET DOES NOT NECESSARILY APPLY TO THIS CATEGORY OF PROJECTS.

Q: **How Do I Get It?** Where do I apply?

A: Certification applications for single-Region, non-hydroelectric, non-water rights projects should be made to the appropriate Regional Board. The Regional Board reviews the application and takes the appropriate certification action (certification or denial).

Applications for multi-regional projects (e.g., pipelines or roads crossing Regional boundaries); for projects involving hydroelectric licensing or relicensing; and for projects seeking a State water rights license should be sent to the Executive Director of the State Board. State Board staff coordinate with the appropriate Regional Board(s) and prepare the certification action.

State and Regional Board addresses are at the end of this document.

Q: **How Do I Apply?** What does an application for certification consist of?

A: A complete application for 401 certification must include an application fee deposit of \$500 and all information required by State law. Regional Boards can provide application forms for their jurisdictions.

Q: **Fees.** How much does review of a certification application cost?

A: Total fees range from \$500 to \$20,000, based on whether technical certification conditions must be developed and the size of the proposed impact (in acres of fill or cubic yards of dredging). Certifications without technical conditions are charged \$500. The fee schedule for technically conditioned projects can be found in California Code of Regulations, Title 23, section 2200(1)(C) .

Q: **State Options for Certification.** What options are open to the State after reviewing an application for water quality certification for a Section 404 project?

A: The State must respond to this type of application in one of two ways:

1. *Certification* - Certification is issued if the proposed project will comply with water quality standards. Certification conditions may be imposed to mitigate potential impacts to beneficial uses and other standards. By federal law (33 USC §1341(d)), such conditions must be included in the Corps' section 404 permit.
2. *Denial* - The State must deny certification if the project will not comply with water quality standards or with procedural requirements. Denial due to failure to meet procedural requirements is called "denial without prejudice" --once the procedural deficiency is addressed, the application for water quality certification may be reconsidered. If certification is denied, the federal permit or license cannot be issued.

When an application for certification is received, the State or Regional Board must take one of the two possible certification actions within the time allowed by federal law.

Q: **Habitat Protection.** Why do the State Water Resource Control Board (State Board) and the Regional Boards concern themselves with fish and wildlife habitat?

A: By federal and State law the water quality agencies must be concerned with maintaining the quality of water needed to maintain natural habitats in and dependent on water bodies.

Q: **How about "Isolated" Waters?** Do I need a permit to fill or discharge to 'isolated" waters.

A: Yes, you need a permit from the Regional Board. If you discharge to an "isolated" waterbody without a State permit you may be subject to substantial fines or criminal action, and you may have to restore the waterbody to its original condition. "Isolated" waters were determined by the US Supreme Court to not need federal permits (the "SWANCC decision"), so you will not receive a Corps section 404 permit or a Certification. But the State permit will ensure that beneficial uses are protected in exactly the same way. Make sure the Corps agrees that the waterbody is "isolated". Otherwise you might be subject to substantial federal penalties for violation of the CWA.

Q: **Other Permits.** What other permits may be needed?

A: For dredge or fill projects, a California Department of Fish and Game (CDFG) Stream and Lakebed Alteration Agreement is frequently required. Contact the local CDFG Regional Office (listed in the "government" pages of the phone book).

For modifications to coastal water bodies, permits may be required from the California Coastal Commission or, in the San Francisco Bay area, the Bay Conservation and Development Commission (BCDC).

In addition, county or municipal (e.g., grading) permits may be required for various activities.

Q: **Corps Nationwide Permits.** What about projects receiving a Corps' "Nationwide Permit" -- do they need individual 401 certification?

A: Most (but not all) do, yes. Check with Regional Board to find out if individual certification is required.

Q: **CEQA Requirements.** Must applications include California Environmental Quality Act (CEQA) documentation?

A: Only if a draft or final environmental document is available when the application is filed. However, State law does require that final environmental documentation be reviewed before certification can be issued. When there is no other CEQA lead agency, the State or Regional Board may become the CEQA lead Agency and develop the documentation. If there is another CEQA Lead Agency but the CEQA document will not be finalized for some time, the State or Regional Board may have to deny the project without prejudice in order to comply with mandated timeframes in which to act on a complete application.

Q: **Getting Approved Faster.** How can an applicant help speed the water quality certification process?

- A:
1. Consult with the appropriate Regional Board (or State Board for multi-Region projects) in planning the project. Water quality concerns are best early with early.
 2. Before applying, contact the Regional Board (or State Board for multi-Region projects) for the latest information on the application procedure.
 3. Supply all information and the \$500 deposit when applying. The lack of necessary information is the single biggest impediment to speedy Certification.
 4. If another local or State agency must satisfy CEQA requirements, be sure that environmental documentation is finalized before the certification application is submitted. If the Regional (or State) Board must be the CEQA Lead Agency, contact that agency well before submitting the application.
 5. Avoid impacts to water resources, especially wetland and riparian areas. Minimize impacts which cannot be avoided. If impacts cannot be avoided or minimized, plan to compensate for all resources temporarily or permanently lost.

Q: **Further Information.** Where can I get more information?

A: The addresses, phone numbers, and internet web addresses for the Regional Boards and State Board are listed below (and are available in the "State Government" section of your local phone book).

CALIFORNIA STATE AND REGIONAL BOARD OFFICES

North Coast Regional Water Quality Control Board

5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Tele: (707) 576-2220
Web Site: <http://www.swrcb.ca.gov/rwq1>

San Francisco Bay Regional Water Quality Control Board

1515 Clay Street, Suite 1400
Oakland, CA 94612
Tele: (510) 622-2300
Web site: <http://www.swrcb.ca.gov/rwqcb2>

Central Coast Regional Water Quality Control Board

895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Tele: (805) 459-3147
Web site: <http://www.swrcb.ca.gov/rwqcb3>

Los Angeles Regional Water Quality Control Board

320 W. 4th Street, Suite 200
Los Angeles, CA 90013
Tele: (213) 576-6600
Web site: <http://www.swrcb.ca.gov/rwqcb4>

Central Valley Regional Water Quality Control Board

(Main Office)
3443 Routier Road, Suite A
Sacramento, CA 95827-3098
Tele: (916) 255-3000
Web site: <http://www.swrcb.ca.gov/rwqcb5>

Central Valley Regional Water Quality Control Board

Fresno Office (5F)
3614 East Ashlan Avenue
Fresno, CA 93726
Tele: (559) 445-5116
Web Site: <http://www.swrcb.ca.gov/rwqcb5>

Central Valley Regional Water Quality Control Board

Redding office (5R)
415 Knollcrest Drive
Redding, CA 96002
Tele: (530) 224-4845
Web Site: <http://www.swrcb.ca.gov/rwqcb5>

Lahontan Regional Water Quality Control Board

2501 Lake Tahoe Blvd
South Lake Tahoe, CA 96150
Tele: (530) 542-5400
Web site: <http://www.swrcb.ca.gov/rwqcb6>

Lahontan Regional Water Quality Control Board

Victorville Office (6V)
15428 Civic Drive, Suite 100
Victorville, CA 92392
Tele: (760) 241-6583
Web site: <http://www.swrcb.ca.gov/rwqcb6>

Colorado River Basin Regional Water Quality Control Board

73-720 Fred Warning Drive, Suite 100
Palm Desert, CA 92260
Tele: (760) 346-7491
Web site: <http://www.swrcb.ca.gov/rwqcb7>

Santa Ana Regional Water Quality Control Board

3737 Main Street, Suite 500
Riverside, CA 92501-3339
Tele: (909) 782-4130
Web site: <http://www.swrcb.ca.gov/rwqcb8>

San Diego Regional Water Quality Control Board

9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Tele: (858) 467-2952
Web Site: <http://www.swrcb.ca.gov/rwqcb9>

STATE WATER RESOURCES CONTROL BOARD OFFICES

Division of Water Rights

1001 I Street, 14th Floor
Sacramento, CA 95814
Tele: (916) 341-5300
Web site: <http://www.dwrweb.swrcb.ca.gov>

Division of Water Quality

1001 I Street, 15th Floor
Sacramento, CA 95814
Tele: (916) 341-5455
Web site: <http://www.swrcb.dwg.ca.gov>