Clean Water Act – Section 401 Water Quality Certification



Presentation Outline

1. Scope of DEQ's authority and obligations under the Clean Water Act (CWA) Section 401 and state law

2. Section 401 process, including application requirements, timelines, reviews, and coordination



CWA Section 401 Authority

- CWA Section 401 requires activities that: 1) need a federal permit or license AND 2) may result in a discharge to "navigable" waters, obtain certification that they will comply with the state's EPA approved water quality standards, programs & policies.
- 401 WQC is administered by DEQ through:
 - OAR 340 Division 48
 - ORS 468B Water Quality
- A federal permit/license cannot be issued without 401
 WQC or a waiver



When is 401 WQC required?

Typical permits and actions requiring 401 WQC

- US Army Corps of Engineers
 - Section 404 CWA 401 dredge/fill permit
 - waterfront development & parks, restoration...
- US Army Corps of Engineers & US Coast Guard
 - Section 10 Rivers & Harbors Act
 - bridges

401 WQC Process and Timing

- Submit joint permit application (JPA) to Corps and DSL
- Corps determines jurisdiction, application completeness, and permit type (IP, RGP, NWP)
- DEQ 401 WQC does NOT have separate application form
 - JPA provides Basic Info applicant name, legal info, project info, land use compatibility (LUCS)
 - DEQ asks for more information to determine water quality impacts
- A fee applies if 500 cy or more of removal or 2 acres or more of fill is proposed.
- DEQ must issue a decision "within a reasonable time period, not to exceed one year" (CWA) typically issue concurrent with Corps process

WQC Process & Corps 404 Permits

- <u>USACE determines whether the project will fit</u> into a Nationwide Permit (NWP) category or Regional General Permit (RGP) or if it will require an Individual Permit (IP)
- RGPs and NWPs have "pre-certified" 401 WQC & no individual PN
 - RGP with 401 Certification = letter to applicant w/ cc to DEQ
 - DEQ SWMP approval may be required
 - NWP category denied 401 WQC = letter to applicant w/ cc to DEQ
 - DEQ requests info, invoices, makes 401 decision, and publishes notice for comments (35 days) Applicant MUST submit all application info to DEQ
 - IP goes out for 15-30 day PN = This begins DEQ's 401 process DEQ reviews application, requests additional information and invoices applicant (if applicable)

401 WQC Evaluation

- Must meet Water Quality Standards and Antidegradation policy
 - Will Temperature, Turbidity, Dissolved Oxygen, pH, etc. be affected?
 - Will this cause beneficial uses to be impaired?
 - Salmonids and aquatic life, but also drinking water, water contact recreation, etc.
 - Can conditions be applied to prevent impairment?
 - If degradation of WQ parameters cannot be avoided, 401 WQC must be denied.
- Must meet CWA Sections 301, 302, 303, 306 and 307
 - Mostly dealing with effluent.
 - 303 is impaired parameters and Total Maximum Daily Loads (TMDLs).
- Must meet other relevant water related requirements of state law
 - ODFW fish passage, OWRD water rights, DLCD statewide goals...

401 Water Quality Evaluation

Some things to consider

- Determine impacts of proposal on waterways Are the waters already impaired? Search DEQ's Integrated Report to determine if waterway is listed:
 - CWA Section 303(d) Listed parameters or potential for concern?
 - Have Total Maximum Daily Loads (TMDLs) been developed?
 - Is there contamination on site?
 - Is impervious surface involved? A Post-Construction Stormwater Management Plan (SWMP) is required.
- Are other DEQ permits required Construction Stormwater and Erosion Control (1200C), Underground Injection Control (UIC) registration, Beneficial Use Determination (BUD) or Solid Waste Letter of Authorization (SWLA) for disposal to uplands, etc.
- What Types of Best Management Practices (BMPs) can be used to prevent violations to Water Quality Standards and protect Beneficial Uses?
- Does proposed mitigation replace lost water quality function within the basin?

Coordination during WQC Evaluation

DEQ will perform additional coordination during the review

- Sediment Evaluation Framework (SEF)
- Biological Opinions
 - DEQ may defer portions of beneficial use review to the NMFS, USFWS, and ODFW
 - If consultations result in a modified project, DEQ must receive final project info prior to 401 decision.
- Stormwater Management Plan (SWMP)
- Cleanup Program
- Public interest



DEQ Websites

• DEQ Section 401 Water Quality Website

http://www.deq.state.or.www.sec40/cert/removalidible

 Oregon Administrative Rules (OARs) pursuant to CWA Section 401:

(http://aroweb.soc.storosocus/aides/CARs 800/SAR 340/340.848. httd)

- Integrated Report (Oregon's 2004 Water Quality Assessment Section 305(b)

(http://www.deg.wage.en.us/wa/nuos/reducts/was/forest2004.pdf