

**R317.  
R317-15.**

**Environmental Quality, Water Quality  
Water Quality Certification.**

**DRAFT - 5-18-12  
Privileged/confidential**

**R317-15-1. Purpose.**

This rule establishes procedures for applying for and processing State water quality Certification pursuant to Section 401 of the federal Water Pollution Prevention and Control Act, 33 U.S.C. § 1341, and consistent with the Utah Water Quality Act, Title 19, Chapter 5. The purpose of Certification is to ensure that the federally permitted or licensed activities will be conducted in a manner that will comply with applicable discharge and water quality requirements in order to maintain the chemical, physical, and biological integrity of the State's waters.

**R317-15-2. Definitions.**

In addition to the general definitions in R317-1-1, the following definitions apply for purposes of this Rule R317-15 only:

- 2.1 "Applicable discharge and water quality requirements" mean requirements in the Utah Water Quality Act, Utah Code Ann. Title 19, Chapter 5, and rules made thereunder that are equivalent to the requirements of 33 U.S.C. §§ 1311, 1312, 1313, 1316 and 1317 and regulations promulgated thereunder.
- 2.2 "Applicant" means a person who applies for a license or permit issued by an agency of the federal government to conduct an activity that is subject to Certification under Section 401.
- 2.3 "Certification" or "Section 401 Certification" means certification by the Director under Section 401 that a proposed discharge will comply with applicable discharge and water quality requirements.
- 2.4 "Licensing or permit agency" means an agency of the federal government to which application is made for a license or permit that is subject to Section 401 Certification.
- 2.5 "Section 401" means Section 401 of the federal Water Pollution Prevention and Control Act, 33 U.S.C. § 1341.

**R317-15-3. Applicability.**

- 3.1 This Rule R317-15 applies to any applicant for a federal permit or license that is subject to the requirements of Section 401. Examples of federal permits or licenses that require Section 401 Certification include the following:
  - (1) Permits from the United States Army Corps of Engineers pursuant to Section 404 of the federal Water Pollution Prevention and Control Act Clean Water Act, 33 U.S.C. § 1344; and
  - (2) Licenses from the Federal Energy Regulatory Commission under the Federal Power Act, 16 U.S.C. Section 1791 et. seq.
- 3.2 Section 401 Certification is required for activities under Section 404 of the Clean Water Act, 33 U.S.C. § 1344. Section 404 requires approval for dredge or fill activities. However there are certain activities that are ordinarily exempt from Section 404 requirements, and which will not therefore require Section 401 Certification under this Rule R317-15. Those activities include the discharge of

dredge or fill material: from normal farming and ranching activities; from the construction or maintenance of farm or stock ponds or irrigation ditches; from the maintenance of drainage ditches; and from the construction or maintenance of farm roads. See Section 404(f), 33 U.S.C. § 1344(f).

- 3.3 Section 401 Certification does not exempt a person from the requirements of the Utah Water Quality Act and rules made under that Act. Persons who are not required to get a Section 401 Certification are still subject to the requirements of the Utah Water Quality Act and rules made thereunder.

#### **R317-15-4 Application**

- 4.1. Unless otherwise determined by the Director, the application for Section 401 Certification shall include the following complete information and documentation:
- (1) The application date.
  - (2) The name and address of the applicant.
  - (3) The signature of the applicant. A corporate application must be signed by an officer of the corporation. Any signature required for application for Section 401 Certification shall be provided as described in 40 CFR Section 122.22(a).
  - (4) The name, address, email address and phone number of a contact for the application, e.g., the person to whom requests for additional information should be addressed.
  - (5) Associated existing or pending federal, State, and local permits, including land use permits, with corresponding file numbers.
  - (6) For proposed discharges:
    - (a) name(s) of the waters where the discharge may occur;
    - (b) the precise latitude and longitude of the discharge location(s) to 5<sup>th</sup> decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;
    - (c) the beneficial use classifications of potentially affected surface waters (see R317-2-13); and
    - (d) list any known causes of water impairment per section 303(d) and 314 of the Federal Water Pollution Control Act and the names of any associated local watershed management plans including TMDL studies. This information can be found on-line at the Utah Division of Water Quality web site.
  - (7) The scope of work or a description of the overall project including: the construction and operation of the facilities which may result in discharge, including description of impacts; cubic yards of dredge or fill; source of fill; and the specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity.
  - (8) If applicable, a description of the function and operation of equipment or facilities to control discharges to be used, including a description of the proposed best management practices or other measures to be used during the proposed activity to prevent or minimize the discharge.
  - (9) If applicable, a description of the methods and means being used or

proposed to monitor the quality and characteristics of the discharge, compliance with conditions of the Certification and the operation of the equipment or facilities employed in control of the proposed discharge and a map showing the location(s) of the monitoring point(s). Necessary monitoring requirements include, but are not limited to:

- (a) at least seven (7) days prior to the beginning of the discharge, the applicant shall notify the Director by electronic mail of the intent to commence the discharge;
  - (b) within seven (7) days after completion of the discharge, the applicant shall notify the Director by electronic mail of the completion; and
  - (c) the applicant shall allow representatives of the Director reasonable entry and access to the discharge site(s) in order to inspect for compliance applicable law and with any Section 401 Certification conditions.
- (10) Supporting documentation (e.g., maps, plans, specifications, project dimensions, copies of associated federal applications, biological and engineering studies, reference information in FERC filings, Environmental Assessment or Environmental Impact Statements, Alternative Analyses required under 33 USC § 1334(b)(1)), as applicable.
- (11) An exhibit that identifies and describes other requirements of State law applicable to the activity that have any relationship to water quality, including requirements under:
- (a) 19-5-114, spills or discharges of oil or other substance;
  - (b) R317-2-12, Category 1 and Category 2 waters
  - (c) R317-2-3.3 Antidegradation Policy;
  - (d) Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities Permit No. UTR300000; and
  - (e) UPDES General Permit for Construction Dewatering Permit No. UTG070000.
- (12) Estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place.
- (13) Additional information regarding any irregularities or unique features of the project.
- (14) Any additional information as required by the Director.
- 4.2 The Director may prescribe a form for application for a Section 401 Certification.
- 4.3 If an application for Section 401 Certification is incomplete or is otherwise deficient, the applicant will be notified and the application will not be processed until the deficiency is corrected. Failure of the applicant to provide a complete application or to correct a deficiency shall be sufficient grounds for denial of the Section 401 Certification or termination of the processing of the application for Section 401 Certification.
- 4.4 The owner or its duly authorized representative shall notify the Director in writing of changes which may affect the application for Certification and Certification process.

- 4.5 The Applicant shall pay the application fee with a check or money order payable to the "Utah Division of Water Quality." Contact the Division for further information about the application fee. The application fee is not refundable or transferable to a separate application.
- 4.6 The Division will provide notice of all Section 401 Certification applications by posting a notice on the Department website. The Division may, at the discretion of the Director, provide a public hearing or a public comment period.

#### **R317-15-5. Timing of Application and Notification of Activities**

- 5.1 An application for 401 Certification shall be made simultaneously with the application to the federal licensing or permit agency. If application is not made in accordance with this requirement, there may be delays and additional fees to allow the collection and consideration of all pertinent information.
- 5.2 (1) The applicant shall notify the Division at least five working days in advance of any of the following activities with the federal licensing or permit agency:
  - (a) Any significant pre-application or other consultation; or
  - (b) Any site visit.
- (2) Failure to comply with the requirements of R317-15-5.2(1) may delay 401 Certification and may result in additional fees

#### **R317-15-6. Director's Decision**

- 6.1 The Director shall issue a Section 401 Certification if an applicant demonstrates that there will be no discharge, or that any discharge will comply with applicable discharge and water quality requirements. Although the evaluation process may vary on a site-specific basis, the Director, in determining whether a proposed discharge comply with applicable discharge and water quality requirements, will ordinarily consider whether a proposed discharge:
  - (1) prevents or interfere with the attainment or maintenance of applicable water quality standards in R317-2 including:
    - (a) impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in rule R317-2-6;
    - (b) exceeds water quality criteria, either narrative and numeric, in R317-2-7;
    - (c) fails to meet the antidegradation requirements of R317-2-3.
  - (2) causes a violation of the Utah Water Quality Act, Title 19, Chapter 51
  - (3) fails to address the measures and recommendations outlined in the local watershed management plans, including but not limited to TMDLs in R317-1-7; or
  - (4) causes an exceedence of effluent limitations or control regulations applicable under R317-8; or
  - (5) otherwise causes a failure of compliance with applicable discharge and water quality requirements.
- 6.2 In considering whether there will be a discharge or whether any discharge will comply with applicable discharge and water quality requirements, the Director may also consider whether the applicant is currently in significant noncompliance

- of the terms and conditions of any previously issued Section 401 Certification for another project or activity, and may deny Section 401 Certification based on the existence of any such outstanding significant noncompliance.
- 6.3 The impacts considered in R317-15-5.1 may be the result of a direct discharge, the result of a discharge to groundwater that may adversely impact surface water quality, or the result of a proposed modification to water quantity that may adversely impact surface water quality.
- 6.4 After review of the application for Certification the Director will either:
- (1) Issue a Section 401 Certification;
  - (2) Issue a Section 401 Certification with specific conditions that must be met in order for the applicant to be in compliance with applicable law; or
  - (3) Deny the Section 401 Certification and include reasons for denial.
- 6.5 If a person who is required to obtain a Section 401 Certification fails to do so, the Director may, at his discretion, process an application for Section 401 Certification after-the-fact. An application for an after-the-fact Section 401 Certifications will be reviewed under the same standards as timely application for Section 401 Certification. The Director may require restoration and/or other actions as a condition of Certification. An after-the fact applicant shall have the burden of proving what the original baseline conditions were, and a Section 401 Certification may be denied in the absence of such proof. After-the-Fact Section 401 Certifications will not have retroactive effect. Enforcement action may be taken for failure to obtain a Section 401 Certification even if a person obtains an after-the-fact permit.
- 6.6 A Section 401 Certification is a Permit Order and may be challenged as provided in Section 19-1-301.5 and R305-7. A recipient of a Section 401 Certification shall comply with all conditions of the Certification; any noncompliance is a violation of these rules and is grounds for enforcement action.