

**R317. Environmental Quality, Water Quality**  
**R317-15. Water Quality Certification.**

**DRAFT 10-18-2012**

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

This rule establishes procedures for applying for and processing State Water Quality Certification pursuant to Section 401 of the federal Clean Water Act, 33 U.S.C. Sections 1251 to 1387 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. Sections 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 "Blanket Certification" means Certification of a group or class of similar activities.
- 2.4 "Certification", "State water quality 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. A Certification may be a blanket Certification.
- 2.5 "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.
- 2.6 "Section 401" means Section 401 of the federal Clean Water Act, 33 U.S.C. Sections 1251 to 1387

**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 Clean Water Act, 33 U.S.C. Sections 1251 to 1387.
  - (2) Licenses from the Federal Energy Regulatory Commission under the Federal Powers Act, 16 U.S.C. Section 1791, et. seq.
- 3.2 Section 401 Certification is required for activities under Section 404 of the

federal Clean Water Act, 33 U.S.C. Section 1344. Sections 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. Section 1344(f).

- 3.3 A Section 401 Certification will ordinarily include conditions necessary to comply with the requirements of the Utah Water Quality Act, Title 19, Chapter 5, and rules made under that Act. However, nothing in this rule or a Section 401 Certification exempts a person from compliance with the Act, or rules made under that Act.

**R317-15-4. Application Provisions**

- 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 Clean Water Act, 33 U.S.C. Sections 1251 to 1387 and the names of any associated local watershed management plans including TMDL studies.
  - (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 to control discharges, 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).
  - (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 Section 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 (ADR);
    - (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 If any information required by 4.1 is expected to be developed in the course of the federal application process, the application shall include a statement to that effect, and shall provide the information when it is submitted to the federal permitting or licensing agency.
- 4.3 The Director may prescribe a form for application for a Section 401 Certification.
- 4.4 If an application for Section 401 Certification is incomplete or is

otherwise deficient, the applicant will be notified and will be given a deadline for the submittal of such information. If the information is not submitted timely and is necessary for reaching a Certification decision, Certification will be denied without prejudice or processing will be suspended. Any subsequent resubmittal will be considered a new application.

- 4.5 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.
- 4.6 The Applicant shall pay any applicable application fees 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.
- 4.7 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.

**R317-15-5. Public Notice and Public Hearing**

- 5.1 The Director's draft 401 Certification shall be subject to a public notice and comment period. The comment period shall ordinarily be 30 days, but may be lengthened or shortened for good cause. For example:
  - (1) the period may be shortened if the application is of a type that is routinely granted;
  - (2) the period may be shortened if the impacts of the proposed activity are minor;
  - (3) the period may be shortened if our period for issuing a 401 Certification is shortened by the federal licensing or permitting agency;
  - (4) the period may be lengthened for a major activity.
- 5.2 The Director may, at the Director's discretion, hold a public hearing to take oral comments.
- 5.3 The U.S. Army Corp of Engineers (Corp) will, from time to time, issue nationwide permits covering common activities that will have short public comment periods or no public comment period. The Division may or may not get advance notice of these comment periods. For these reasons, notwithstanding the requirements of R317-15-5.1, individual blanket Certifications for nationwide permits adopted by the Corp may be issued without any public notice or comment period.
- 5.4 When practicable, the public notice and comment period and any public hearing for a draft 401 Certification may be held jointly with federal or state agencies that are licensing or permitting the proposed activity.
- 5.5 The Division will publish the public notice by one or more of the following methods:
  - (1) Utah Public Notice website, Utah Code 63F-1-701;

- (2) Utah Department of Environmental Quality website; or
- (3) Any other means selected by the Director that will effectively solicit input from stakeholders representing State and federal agencies, interests groups, and the general public.

**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 interferes 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 (ADR) requirements of R317-2-3;
  - (2) causes a violation of the Utah Water Quality Act, Title 19, Chapter 51;
  - (3) fails to address the wasteload and load allocations in listed TMDLs in R317-1-7;
  - (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 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;
  - (3) Deny the Section 401 Certification and include reasons for denial; or.
  - (4) Waive Certification if the Director finds that the activity will:
    - (a) cause minimal or no impacts to the quality of state waters;or

(b) have a temporary and limited effect on water quality, as provided in R317-2-3.5(2)(b)(4).

- 6.4 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 Certification will be reviewed under the same standards as a 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.
- 6.5 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.