

# Water Quality Program Policy

Department of Ecology

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## Chapter 1

MAR 10 REC'D

## WQP Policy 1-27

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Shorelands & Environmental Assistance Program

Effective: March 2005

### Establishing a Process for the development of 401 Certification Conditions for Existing Hydropower Facilities going through FERC Relicensing

**Purpose:** Establish a procedure that the Water Quality Program will use to develop conditions for a Clean Water Act Section 401 Certification with the public for existing hydropower facilities that are going through relicensing.

**Application:** To be used by Water Quality Program staff to work with all interested parties in the development of draft or preliminary 401 conditions prior to issuance of the final 401 certification for existing hydropower facilities going through relicensing.

#### 1. Definition

Existing hydropower facility means already built dams that are in the process of having their facility go through relicensing under FERC. This does not include any 401 certifications outside the relicensing process that the facilities might need as the result of construction or other maintenance changes, e.g., 401 certification required for an Army Corps of Engineers Clean Water Act Section 404 Permit.

#### 2. Background

The Water Quality Program issues 401 certifications for existing (and new) hydropower facilities going through relicensing, all other 401 certifications are issued by the Shorelands and Environmental Assistance (SEA) Program. Because of the unique nature of the hydropower relicensing process, this policy applies only to the existing hydropower facilities going through FERC relicensing process. This policy does not apply to nor indicate that other 401 certifications issued by Ecology would go through the same review process.

The Water Quality Program has been requested by a diverse group of interests (regulated community, tribes, and environmental organizations) to work with them in the development of a process to draft conditions prior to issuing the final 401 certification. The FERC relicensing process involves multiple stakeholders with a myriad of interests in the operation of hydroelectric facilities. The process takes several years and typically involves a variety of negotiated conditions to address the needs of the stakeholders. It is important then that the 401 Water Quality Certification be well coordinated with these other parties and negotiated relicensing conditions. Based on experience working on these particular certifications, the Water Quality program believes providing the opportunity for comments on draft 401 conditions may ultimately reduce agency resources spent on preparing certification decisions and result in better quality 401 certification decisions.

In addition, these certificates are processed during the relicensing process, which can take many years to complete. Coordinating, through a public review, will provide a greater potential the final 401 certificate will

not conflict with other agreements made in the relicensing process. An additional important consideration in a decision whether to provide for review of draft 401 conditions is the availability of sufficient time. Under section 401 of the Clean Water Act, the agency has one year from the date of the request to issue a certification decision. When sufficient time does not exist to provide for public comment before the end of the one-year period, Ecology may request the applicant to withdraw its 401 request and reapply to restart a new one-year period.

The Water Quality Program will follow the process outline below as the mechanism to share draft 401 certification conditions prior to issuing a final 401 certification.

### 3. Process the Water Quality Program will follow

The Water Quality Section program will make draft or preliminary 401 conditions available for public comment using the following process:-

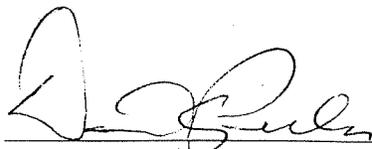
1. The agency will mail a notice that the draft 401 conditions are available for public comment to persons and organizations that have requested to be on the interested parties' mailing list.
2. The draft 401 conditions will be placed on Ecology's hydropower 401 certification website <http://www.ecy.wa.gov/programs/wq/ferc/index.html>
3. Any person desiring to present comments on the draft or preliminary conditions in relation to compliance with section 401 of the Clean Water Act shall do so by providing information in a letter or email to the Water Quality Section Manager responsible for the final draft 401 certificate. Comments should be submitted within 30 days of the website posting or such longer period of time as the regional Water Quality Section Manager may determine.

The Water Quality Program will consider all comments when making final 401 certification decisions.

The Water Quality program **will not** do the following based on the comments received:

- Issue a responsiveness summary
- Hold public hearings as part of the review

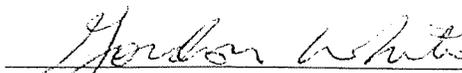
Approved:



David C. Peeler, Manager  
Water Quality Program  
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Date

3/4/05



Gordon White, Manager  
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Date

3/4/05