Clean Water Act
§ 404 & 401 Compliance for In-Stream Projects
Introduction

Courtney Cacace
Permitting Specialist / Biologist
AECOM
courtney.cacace@aecom.com
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Please log into the following website:

www.surveymonkey.com/r/swq-compliance2018
Learning Objectives

- Overview of Clean Water Act (CWA)
  - 404 Permits
  - 401 Water Quality Certifications (WQC)
- Contractor Responsibilities
- Avoiding Permit Compliance Issues
CWA § 404 Permits

- Army Corps of Engineers
- Dredge and Fill in Waters of the U.S.
- Water of U.S. = streams, tidal waters, wetlands, etc.
- Dredge = removing material & pushing/moving material
- Fill = soil/sediment, rock(s)/rip-rap, sand/gravel bags, concrete, etc.
- Rivers and Harbors Act § 10 Permits – structures in or over navigable waters, including dredge and fill.
CWA § 404 Permits
Nationwide, Regional, and Individual Permits

- 54 Nationwide Permits (NWP)
  - 7 Revoked by Honolulu District (coal/mining, cranberry production, & water-based renewable energy generation)
  - NWP Examples:
    - #3 Maintenance
    - #13 Bank Stabilization
    - #14 Linear Transportation Projects
    - #25 Structural Discharges
    - #27 Aquatic Habitat Restoration
    - #33 Temporary Construction, Access, and Dewatering
  - Regional Condition: Permanent loss of waters from dredge and fill material < 0.10-acres

- Regional General Permits

- Individual Permits
CWA § 404 Permit
Federal Resource Agency Consultations

United States Fish & Wildlife Service (USFWS)
- Endangered Species Act (ESA)

National Marine Fisheries Service (NMFS)
- ESA
- Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat (EFH)

State Historic Preservation Division (SHPD)
- National Historic Preservation Act (NHPA)
- HRS Chapter 6E – Historic Preservation Review
CWA § 401 Water Quality Certification (WQC)

- Department of Health – Clean Water Branch (DOH-CWB)
- Required for all 404 Permits
- Certify discharges to surface waters do not violate State water quality standards or CWA.
Contractor Responsibilities

Hanalei River
Kaua’i
CWA § 404 Permit Conditions

- Permit Project Description
  - Purpose, volume, and area of each specific type of fill
  - Example: Hanalei River Project
    - Earthen berm = 1,288 CY of fill (684 CY rock and 604 CY soil) within 0.625 acres of the river
    - Rock vane and bank spurs = 36 CY of fill within 0.04 acres of the river
    - Temporary cofferdam of large boulders collected on-site and reused for construction of permanent improvements
  - Review the 404 Permit Application
CWA § 404 Permit Conditions

- Permit Conditions
  - Project specific

- Nationwide Permit General Conditions and Honolulu District Regional Conditions
  - General conditions
  - Mostly addressed through project design, permitting, and project specific conditions
  - Examples: impacts to navigation, aquatic life movement, endangered species, historic resources, WQC, BMPs
CWA § 404 Permit Common Permit Conditions

- Demarcate construction area
- Install, inspect, and maintain BMPs per construction plans
- Stop work during storm events (except to protect property and/or environment)
- Stabilize construction area prior to storm events
- Stockpile management - cover & perimeter controls
- Waste and debris management
- Equipment and vehicle maintenance, storage, fueling areas, distance from stream
CWA § 404 Permit
Endangered Species Protection

Endangered Hawaiian Waterbirds

- Moorhen
- Duck
- Stilt
- Coot

- Surveys and monitoring
- Report nests and chicks/ducklings to USFWS
- 100 foot buffers around all nests and young
- Stop work within 100 feet of waterbirds
- Submit annual report to USFWS
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Poll Question #1

Has your work been delayed for birds?
CWA § 404 Permit
Threatened and Endangered Species Protection

- Hawaiian hoary bat - No trimming or removing woody vegetation over 15-ft. from June 1 to Sept. 15
- Plant surveys, buffer zones, minimize disturbed area
- Monk seal & sea turtle survey, monitor, and stop work within 150-ft.
- Monk seal critical habitat - 5 meters inland
- Yellow-faced bees and Hawaiian damselfly
CWA § 404 Permit
Historic and Cultural Resources Protection

- Protection of known historic and cultural resources
- Stop work and protect any subsurface historic and cultural findings and contact the SHPD
- Archeological monitoring – may be required
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Poll Question #2

Has your work been delayed for historic or cultural resource(s)?
CWA § 401 WQC Conditions

- Comply with BMP Plan
  - Erosion and sediment control measures, soil stabilization, etc.
- No return flow from stockpiles to waters
- Biosocks are not allowed in-water (404 Permit)
- Stop work during storms or floods
- Comply with Applicable Monitoring and Assessment Plan/Program (AMAP)
- Photos before, during, and after completion of construction
- Submittal of laboratory results and photos to DOH, per AMAP
CWA § 401 WQC Conditions

- Stop work if water quality monitoring indicates exceedance of AMAP levels (State WQS, HAR 11-54)
- Report spills to DOH-CWB and DOH Office of Hazard Evaluation and Emergency Response (DOH-HEER)
- Records available on-site or field office (monitoring reports, disposal records, etc.)
- 401 WQC and application available on-site or field office
- Submit changes to BMPs, AMAP, or other info on file to DOH-CWB for review and comment
- Submit Solid Waste Disclosure Form for Construction Sites to DOH Solid and Hazardous Waste Branch (DOH-SHWB)
CWA § 401 WQC
Applicable Monitoring and Assessment Plan (AMAP)

- Purpose – Determine impacts and effectiveness of BMPs
- Qualified sampler
- Pre, During, and Post Construction Monitoring
- Report results within 24 hours

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<th>Dry Season Inland Water Criteria (May-October)</th>
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CWA § 401 WQC
Applicable Monitoring and Assessment Plan (AMAP)

- Decision units (DUs)
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https://www.surveymonkey.com/r/swq-compliance2018
Poll Question #3
Has your work been delayed for water quality exceedances?
CWA § 401 WQC BMPs
Turbidity Curtains

- Never allowed to fully block stream flow
- Backup curtains
- Best in slow, calm water
- Source of turbidity if improperly used

[Diagram of Turbidity Curtains with labels and explanations]
CWA § 401 WQC

Equipment in Streams

- Strongly discouraged, unless there is no other alternative
- Water stays below parts with oils and lubricants
- Clean equipment and vehicles
Avoiding § 404 & 401 Compliance Issues

- Read the permit, ask questions, raise flags
- Expiration date
- Only authorize the actions, structures, and fill listed
- Means, methods, and temporary works (fill) may not be authorized
  - Temporary access ramps
  - Removal of deposited sediment
  - Clean water diversion: sand/gravel bags, cofferdam, etc.
- BMPs ineffective / water quality exceedences
  - Back-up plans
- Comply with all conditions
Review Exercise

Please log into the following website:

www.kahoot.it

*Please wait for game code
Poll Question #4

Equipment Access

You need to get a small excavator into an intermittent stream with vertical concrete walls. Your 404 & 401 Permits allow for equipment in the stream under no flow conditions. How do you get your equipment into the stream?

A. Build a temporary gravel surge ramp.
B. Lower equipment into the stream with a crane.
C. Pre-fabricate a wood or steel access ramp that you lower into the stream.
Poll Question #5
**Turbidity Plume**

During dredging of the stream channel you observe turbid water downstream of your work area, beyond the limits of your turbidity curtain. What would you do?

A. Stop dredging, until the turbid water is no longer escaping the work area

B. Continue dredging, the permits authorizes you to dredge the channel and some turbidity should be expected.

C. Deploy a second turbidity curtain further downstream
Other Permits and Authorizations

- Coastal Zone Management Act (CZMA) Federal Consistency Determination
- Stream Channel Alteration Permit (SCAP)
- Rivers and Harbors Act § 10 Permits
- National Pollutant Discharge Elimination System (NPDES) Permit
- Conservation District Use Permit (CDUP)
- Special Management Area (SMA) Permit
Thank You!

- Questions?
- Tell me your stream construction stories

Courtney Cacace
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