

WETLANDS FACT SHEET # 24 **401 Certification and Wetlands**

Opportunity for States

Under Section 401 of the Clean Water Act (CWA), States and eligible Indian Tribes have the authority to review and approve, condition, or deny all Federal permits or licenses that might result in a discharge to State waters, including wetlands. The major Federal programs subject to §401 certification are: Section 404 and 402 permits (in non-delegated States); Federal Energy Regulatory Commission (FERC) hydropower licenses; and Rivers and Harbors Act Section 9 and 10 permits. States may choose to waive their §401 certification authority.

States make their decision to deny, certify or condition permits or licenses primarily by ensuring that the activity will comply with State water quality standards. In addition, States look at whether the activity will violate effluent limitations, new source performance standards, toxic pollutants and other water resource requirements of State law or regulation.

EPA Assistance to States

Technical Guidance:

In 1988, the National Wetlands Policy Forum recommended that States "make more aggressive use of their certification authorities under Section 401 of the CWA to protect their wetlands from chemical and other types of alterations". In response, EPA issued guidance in 1989 to States on applying §401 certification to protect wetlands. A year later, EPA followed this up with guidance on developing water quality standards specifically for wetlands. Wetland water quality standards are important because they are the primary tool used in water quality certification decisions.

Financial Support:

Nineteen States and one Indian Tribe have been awarded State Wetlands Grants to support use of Section 401 Certification to pro-

Does §401 certification add another layer of bureaucracy or cause delays? It shouldn't. Instead, 401 certification allows States to take a more active role in wetland decisions. In most cases, 401 certification review is conducted at the same time as the Federal agency review. Many States have established joint permit processing to ensure this. In addition, the 401 review allows for better consideration of State-specific concerns.

tect wetlands. These grantees are: Arizona, California, Hawaii, Idaho, Indiana, Maryland, Massachusetts, Michigan, Mille Lacs Tribe, Minnesota, Missouri, Nebraska, North Carolina, Oregon, South Carolina, Texas, Utah, Virginia, West Virginia and Wyoming.

State Progress

Over the past several years, States have made progress in applying §401 certification to wetlands. Some States rely on §401 certification as their primary mechanism to protect wetlands in the State. In addition, most States denied or conditioned §401 certification for some §404 nationwide general permits in order to reduce certain problematic losses in their State. In particular, many States denied certification of nationwide 26 because they believe that individual review of projects in isolated and headwater wetlands is critical to achieving CWA goals in their State.

EPA has asked States to develop or improve their wetland water quality standards by the end of September 1993. Wisconsin is using

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its new standards in §401 certification decisions on wetlands. Other States are using their §401 authority to condition some of the more than 300 dams that are coming up for relicensing by FERC. §401 certification allows States to address associated chemical, physical and biological impacts such as: low dissolved oxygen levels, turbidity, inundation of habitat, stream volumes and fluctuations, filling of habitat, impacts on fish migration and loss of aquatic species due to habitat alterations.



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How can water quality standards protect wetlands?

Water quality standards have three components: designated uses; criteria to protect those uses; and an antidegradation policy. States designate uses based on the functions and values of their wetlands. At a minimum these uses must meet the CWA goals to provide for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water. States may also designate uses associated with unique functions and values of wetlands such as floodwater storage and groundwater recharge.

States adopt criteria to protect those uses. Criteria can be general narrative statements such as "maintain natural hydrologic conditions, including hydroperiod, hydrodynamics, and natural water temperature variations necessary to support vegetation which would be present naturally." Criteria may also include specific numeric values such as a dissolved oxygen concentration of 5.0 mg/l.

State antidegradation policies include provisions for full protection of existing uses

(functions), maintenance of water quality of high quality waters, and a prohibition against lowering water quality in outstanding resource waters. In addition, a State's antidegradation policy addresses fill activities in wetlands by ensuring that there is no significant degradation due to the fill activity.

Narrative criteria in conjunction with antidegradation policies, can provide the basis for addressing hydrologic and physical impacts to wetlands (not discerned through numeric criteria) caused by nonpoint source pollution, storm water discharges, groundwater pumping, filling and other sources of wetland degradation. When combined with a strong implementation policy, wetland water quality standards can provide the basis for such tools as best management practices, monitoring programs, and mitigation plans, as well as serve as the primary basis for §401 certification decisions.

For more information: contact the EPA Wetlands Hotline* at 1-800-832-7828 for copies of: Wetlands and 401 Certification, 1989; Water Quality Standards for Wetlands, 1990; Statement of Martha G. Prothro May 1992.

* Contractor operated

