

Section 401 Clean Water Act/Water Quality Standards: Washington State Conditions Certification for Dams' Operations on Temperature Controls



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05/14/2020

The Washington Department of Ecology (“WDE”) on May 7th issued Clean Water Act Section 401 water quality certifications for eight federal dams conditioned on compliance with certain temperature water quality standards.

The Section 401 certifications were for dams located on the Lower Columbia and Lower Snake Rivers.

Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedance of water quality standards, or other applicable authorities, of a state. This provision of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharges from the facility will comply with applicable state water quality standards. If not provided, the federal permit or license may not be granted. Further, states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

The dams addressed by the 401 certification are federal hydro facilities. A Section 401 certification is required because of a federal license that must be obtained from the Federal Energy Regulatory Commission.

The WDE 401 certification references the United States Environmental Protection Agency intent to finalize a Clean Water Act temperature Total Maximum Daily Load (“TMDL”) in the Lower Columbia and Lower Snake Rivers. The state agency certification requires that the subsequent TMDL temperature standards be incorporated into the certification once the TMDL is approved.

A copy of the WDE 401 certification for one of the locks and dams can be downloaded [here](#).