A scenic view of a river with a small waterfall and a large black pipe in the foreground. The waterfall is in the middle ground, surrounded by rocks and greenery. The pipe is in the foreground, running along the right side of the river. The background is a dense forest of tall evergreen trees under a clear blue sky.

Roles and Responsibilities: Section § 401 Water Quality Certifications

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February 25, 2015

Overview

- Legal Foundation
- Section § 401 Authority
- Water Quality Standards
- Potential Issues at Hydroelectric facilities

Public Trust Doctrine

The waters of Vermont are held in trust by the state for the benefit of all Vermonters

Clean Water Act

Objective: *“To restore and maintain the chemical, physical and biological integrity of the Nation’s waters”*

Goal: *“water quality for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water”*

§401 Water Quality Certification

Section 401 requires “[a]ny applicant for a Federal license or permit to conduct any activity . . . which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certificate from the State . . . That any such discharge will comply with the applicable provisions of [the Clean Water Act].” 33 U.S.C. § 1341

Meaning –state certification is required if:

- There is a federal license or permit
- The project will result in a discharge to state waters

Water Quality Certification

- State certifies that the project meets state water quality standards
- Contains conditions necessary to ensure standards are met
- Certification is only “permit” required by State for FERC-regulated projects

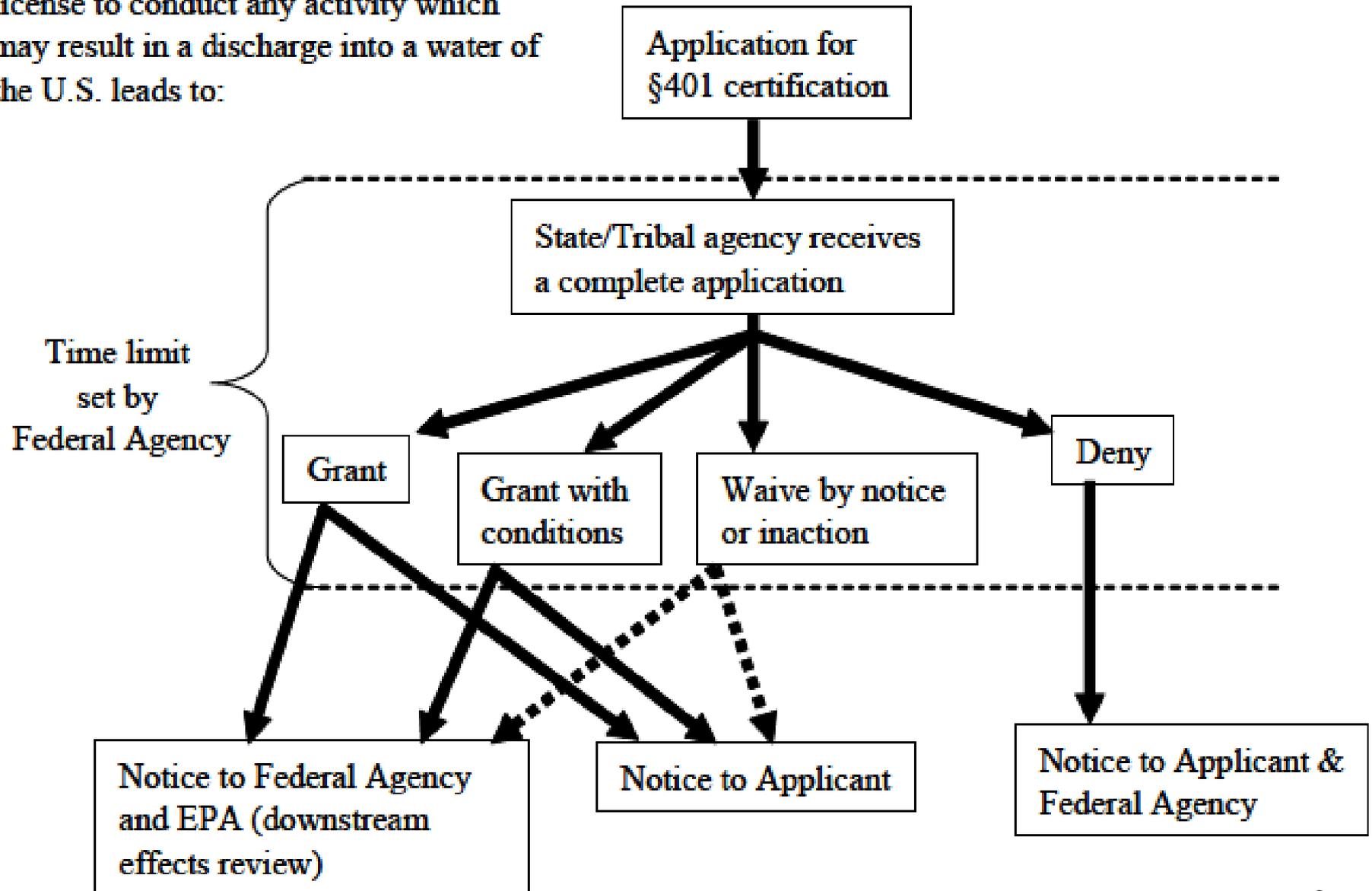
Water Quality Standards

Class B Management Objectives

- Aquatic Biota, Wildlife and Aquatic Habitat – Aquatic biota and wildlife sustained by high quality habitat
- Aesthetics – Water character, flows, water level, bed and channel characteristics exhibiting good aesthetic value
- Boating, Fishing and Other Recreational Uses – Suitable for these uses

CWA §401 Certification Process

Application for a federal permit or license to conduct any activity which may result in a discharge into a water of the U.S. leads to:



Clean Water Act § 401

Section 401 provides states with two distinct powers/obligations

- 1) authority indirectly to deny federal permits or licenses by withholding certification; and
- 2) authority to impose conditions upon federal permits by placing limitations on certification

Questions?

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