

What's New in the Division of Hydropower Licensing (DHL)?

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Last Year in Review

Since WaterPower Week 2023, DHL has issued:

- 1 original license
- 7 relicenses
- 2 exemptions (both 10 MW or less)
- 17 preliminary permits (9 conventional, 8 pumped storage)
- 6 projects exempted from licensing as qualifying conduit hydropower facilities



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Where FERC Authorized Hydropower Stands Today

We are currently administering:

- 1, 017 licenses
- 613 exemptions
- 81 preliminary permits (29 conventional, 47 pumped storage, 4 tidal hydrokinetic, and 1 inland current hydrokinetic)



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DHL's Upcoming Workload

- 161 projects currently before the Commission (10 original licenses, 150 relicenses, 1 10-MW or less exemption)
- 38 pending preliminary permits (9 conventional, 25 pumped storage, 3 tidal hydrokinetic, and 1 inland current hydrokinetic)
- 31 relicenses will start the process between today and the start of WaterPower Week 2025

In the last year, DHL has brought 17 new full-time employees on board, while losing 5



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New NEPA Regulations

On June 3, 2023, President Biden signed the Fiscal Responsibility Act of 2023 (FRA). The FRA includes important changes to NEPA.

Changes that have affected DHL:

The page limits prescribed mirror those currently in place by CEQ's NEPA Implementing Regulations; those are 75 pages for an Environmental Assessment (EA) and 150 pages for an Environmental Impact Statement (EIS) with up to 300 pages allowed for projects of extraordinary complexity. These page limits do not include citations or appendices.

NEPA's implementing regulations require completion of an EIS within two years and one year for an EA. The FRA changed the start time for the one- and two-year deadlines. The clock now starts when an agency decides whether to do an EIS or EA. For hydropower licensing, we issue a notice declaring whether we plan to issue an EA or an EIS for a project.

ILPs- Within 14 days of comments received on the REA notice

TLPs- concurrent with issuance of scoping document 1



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New Water Quality Certification Modification Process

- The 2023 *Clean Water Act Section 401 Water Quality Certification Improvement Rule* became effective on November 27, 2023. The final rule does not apply retroactively to actions already taken under EPA's previous 2020 rule.
- Because the Commission has already established a categorical reasonable period of time (RPT) for certifying authorities to act on requests for water quality certification for hydroelectric license applications, the RPT will remain 1 year from the date on which the certifying authority receives the application.
- A pre-filing meeting request between the applicant and certifying authority is still required and must occur at least 30 days prior to submitting a final water quality certification request.
- The new rule stipulates that a certifying authority must act on a certification request in one of four ways, including grant of certification, grant of certification with conditions, deny certification, or expressly waive certification.



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New Water Quality Certification Modification Process

- Establishes a cooperative process that certifying authorities and federal agencies can agree in writing that the certifying authority may modify portions of a grant of certification (with or without conditions). However, a certifying authority may not change the nature of the certification decision (i.e., grant, deny, waiver).
- Timing: Certifying authorities can request a modification at any point after the certification issuance (until the expiration of the Federal license or permit).
- Who decides: The rule does not allow for unilateral modifications by certifying authorities (such as through a “reopener” clause as part of a grant of certification). Thus, the certifying authority must request to modify its certification and the federal agency must consider the request but can decline a request to modify a certification.
- Any request for modification should be made in writing to the Commission and will be considered on a case-by-case basis.
- The Commission is currently reviewing its regulations to ensure consistency with the new rule.



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