

§401 Water Quality Certification  
Process for  
Federal Energy Regulatory  
Commission (FERC)  
Hydro Relicensing



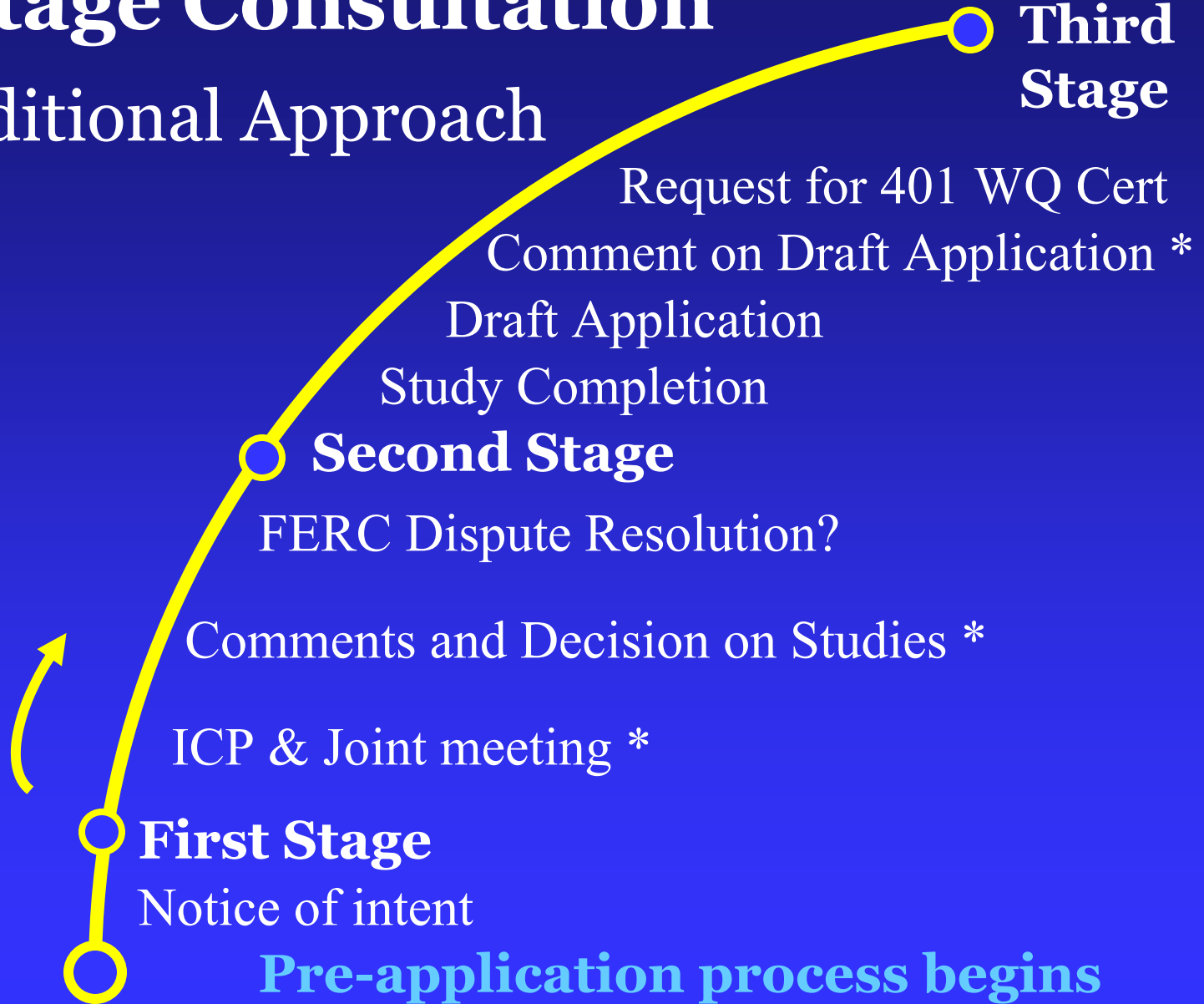
# Regulatory Authority

- **Section 401 Clean Water Act**
- **S.C. R. 61-101 Water Quality Certification**
  - S.C. R. 61-68 Water Classification & Standards.
  - S.C. R. 61-69 Classified Waters.
  - S. C. R. 19-450 Permits for Construction in Navigable Waters (new licenses).
  - Pollution Control Act
  - Through appropriate State Regulations, the 401 Water Quality Certification allows the Department to regulate hydroelectric facilities in a way that provides a reasonable assurance the water quality standards will not be contravened and that existing and classified uses of affected waterbodies will be maintained.

# 3-Stage Consultation

## Traditional Approach

Application Filed



# 3-Stage Consultation

---

- ▶ **First Stage**

- ▶ Initial review, project modifications, proposed studies

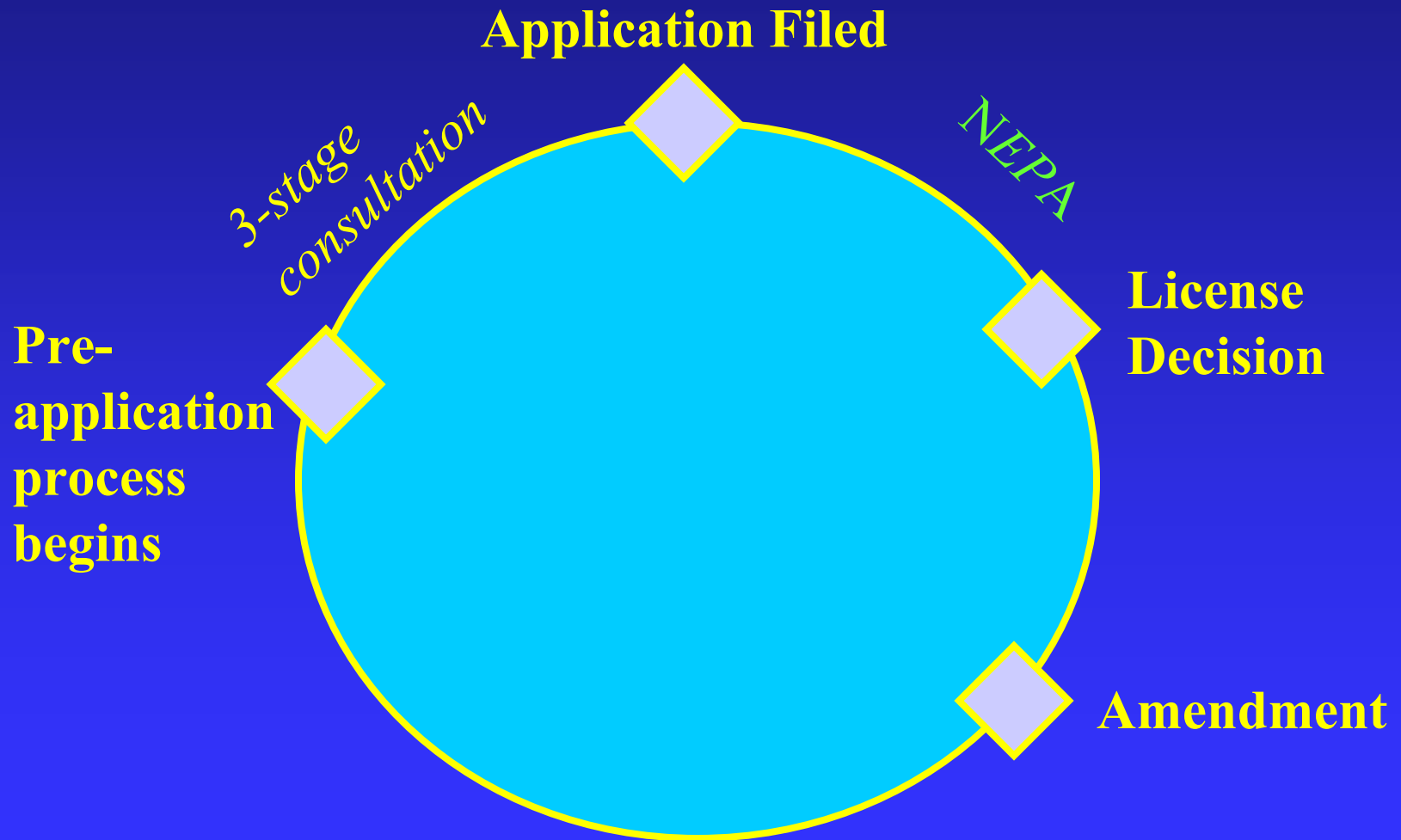
- ▶ **Second Stage**

- ▶ Completion of studies, determination of mitigative measures, draft application

- ▶ **Third Stage**

- ▶ Final application filed

# Traditional Approach



# 401 Water Quality Certification Process

## FERC Stage I

- **Receive and Review Initial Consultation Package**
  - Scope of Review for Operation of Hydro Facilities for Licensing/Relicensing May Include:
    - Water Quality
      - D.O. levels in water released from hydro facilities.
      - Temperature of water released from hydro facilities.
      - Other water quality parameters if influenced by hydro operation.

# 401 Water Quality Certification Process

- Scope of Review for Operation of Hydro Facilities for Licensing/Relicensing (continued).
  - Minimum flow releases
    - Assimilative capacity for downstream NPDES discharges.
    - Aquatic life habitat (downstream or bypass reach).
  - Endangered Species.
  - Navigation (new licenses).

# 401 Water Quality Certification Process

## FERC Stage I (continued)

- **Attend Interagency Meeting to Discuss Issues**
- **Provide Written Comments**
  - Scope of 401 Issues.
  - Additional information/data needed with justification.
  - Studies needed to provide additional data needed.



# 401 Water Quality Certification Process

## FERC Stage II

- **Study Plans Finalized After Approval By Department**
- **Studies Completed**
  - Data and other technical information provided in reports
- **Applicant Submits Application For 401 Water Quality Certification.**
  - Department reviews application for completeness (study results reported/other technical information requested).
  - Other information required for processing application includes list of adjacent property owners and addresses, applicant contact information, cubic yards of fill/excavation if new license etc.

# 401 Water Quality Certification Process

- **Complete Application Starts 401 Process**
- **Department issues SCDHEC Public Notice**
  - Distributed to adjacent property owners, resource agencies, other interested parties.
    - Comments to be sent to Department within 30 days.
  - One year clock starts (Department has 1 year from Public Notice date to issue, waive, or deny certification).
    - Department has 180 to issue decision unless waiting for information/processing items from applicant (fee refunded if 180 days exceeded).

# 401 Water Quality Certification Process

## **Post Application Process (continued).**

- Form sent notifying applicant of fee and newspaper affidavit requirements.
  - Applicant required to publish brief project description in newspaper .
  - Comments to be sent to Department within 15 days.
- Department Holds Public Hearing if at least 20 requests received.
  - Written comments to be sent to Department within 30 days of hearing.
- 401 Technical Review Process Officially Starts

# 401 Water Quality Certification Process

## Post Application Process (continued)

- **Staff Assessment Prepared When Technical Review Complete**

- Staff Assessment is the document supporting 401 decision and conditions.
- Written Assessment addresses the water quality impacts of the project and makes conclusions concerning compliance with water quality standards and protection of classified uses.
- Considers comments received.
- Conditions are project specific, but may include minimum flow requirements (including bypass reaches), hydro operations addressing water quality (e.g., turbine venting) sediment passage, notification of downstream water users if water withheld, notification of fish kills etc.
- Coastal Zone Consistency Certification and/or Navigable Waters Permit with Conditions Incorporated (if applicable).

# 401 Water Quality Certification Process

- **Notice of Proposed Decision (NOPD) Issued**
  - Notice lists conditions and has Staff Assessment attached
  - Notice is sent to applicant, adjacent property owners, resource agencies and other interested (commenting) parties.
  - Gives recipients opportunity to appeal 401 WQC decision within 15 days.
  - If Certification Decision Appealed Legal Department Processes in Accordance with Contested Case Procedures DHEC Regulation 61-72.
- **Final Certification Decision Issued (if no appeal).**
  - Certification letter with conditions issued to applicant

# Application Filed

Public Notice of Application (Tendering)

Additional Study Requests, if any \*

Adequacy Review

Public Notice (Acceptance)

Comments & Interventions \*

Scoping Notice & Scoping Document 1

AIR and response to additional studies

Scoping Meeting \*

Scoping Comments \*

Scoping Document 2 and AIR

REA Notice

Rec., mandatory conditions \*

Draft NEPA Document

NEPA Comments \*

10(j) meeting

Final NEPA Document

License Decision

## NEPA

## Traditional Approach