

401 Water Quality Certification Final Rule Effective September 11, 2020

On July 12, 2020 the U.S. Environmental Protection Agency (USEPA) published the final Clean Water Action (CWA) Section 401 Certification Rule (rule) to update and clarify the substantive and procedural requirements for water quality certification (WQC) under CWA Section 401. The rule became effective on September 11, 2020. The rule is available at <https://www.epa.gov/cwa-401> and additional information regarding the rule is available at <https://www.epa.gov/cwa-401/guidance-section-401-certification>

How the Rule Affects the Corps Regulatory Program

The U.S. Army Corps of Engineers, Kansas City District (Corps) is charged with the administering Section 404 of the CWA in waters of the United States. This is accomplished through a Department of the Army (DA) permit program. Under this program, most activities involving work in waters of the United States, including wetlands, require authorization from the Corps. If DA authorization is required for an activity that may result in a discharge into waters of the United States, then WQC is required prior to the Corps issuing the license or permit.

One of the most visible changes resulting from the rule is the requirement for the project proponent to request WQC directly from the certifying agency. The rule requires the project proponent and certifying agency to communicate directly and encourages early coordination and consultation. Questions regarding WQC procedures should be directed to the appropriate certifying agency. Contact information for certifying agencies within the Kansas City District is available on the following page. A map identifying Corps offices with contact information is available at <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll10/id/12737>.

Summary of Actions Required for WQC

The following is an abbreviated list of actions required to satisfy a request for WQC. The following list is not all inclusive and is provided for information only. Project proponents are strongly encouraged to work directly with the appropriate certifying agency regarding the requirements for WQC.

1. At least 30 days prior to submitting a WQC request, the project proponent shall request a pre-filing meeting with the certifying authority.
2. The project proponent will submit a certification request concurrently to the certifying agency and appropriate Corps office. There are different requirements in 40 CFR 121.5 for the information required to be contained within the WQC request depending on the type of Corps license/permit.
3. The rule requires that action on a WQC request must be taken by the certifying authority within a reasonable period of time, but in no case later than one year after receipt of a certification request. The Corps will establish the reasonable period of time on either a categorical or case-by-case basis, according to criteria prescribed by the rule. Once the certifying agency has received the Corps notice of the reasonable period of time, it may make a written request for extension, if necessary. If the Corps agrees to extend the reasonable period of time, the certifying agency and project proponent shall be notified in writing.

Certifying Agencies Within the Kansas City District Regulatory Boundary

State of Missouri:

- Prefiling meeting requests & certification requests are to be submitted electronically to: wpsc401cert@dnr.mo.gov
- Mr. Mike Irwin
Department of Natural Resources, Water Protection Program
P.O. Box 176, Jefferson City, MO 65102-0176
mike.irwin@dnr.mo.gov
573-522-1131
- 401 WQC website: <https://dnr.mo.gov/env/wpp/401/>

State of Kansas:

- Prefiling meeting requests & certification requests are to be submitted electronically to: nps@kdheks.gov
- Mr. Scott L. Satterthwaite
Kansas Department of Health and Environment
Bureau of Environmental Field Services, Watershed Management Section
1000 S.W. Jackson St., Suite 430
Topeka, Kansas 66612
Scott.Satterthwaite@ks.gov
785-296-5573

Indian Country (Kansas only):

- Prefiling meeting requests & certification requests are to be submitted electronically to: R7cwa401@epa.gov
- Ms. Jennifer Ousley
US Environmental Protection Agency
11201 Renner Boulevard Lenexa, Kansas 66219
Ousley.Jennifer@epa.gov
913-551-7498
- 401 WQC website: under development