



**US Army Corps
of Engineers**

Jacksonville District ®

Public Notice

CLEAN WATER ACT SECTION 401 CERTIFICATION RULE

Please address all comments and inquiries to:

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NOTICE ANNOUNCING THE CLEAN WATER ACT SECTION 401 CERTIFICATION RULE

Effective September 11, 2020, the “Clean Water Act (CWA) Section 401 Certification Rule” (85 Fed. Reg. 42,210 (July 13, 2020)) is being implemented nationwide. The Rule (to be codified at 40 C.F.R. Part 121) establishes procedures that promote consistent implementation of CWA Section 401 and regulatory certainty in the federal permitting process. Section 401 of the CWA provides States and authorized Tribes with an important tool to help protect the water quality of federally regulated waters within their borders, in collaboration with federal agencies. Section 401 of the CWA requires that, for any federally licensed or permitted project that may result in a discharge into waters of the United States, a water quality certification be issued to ensure that the discharge complies with applicable water quality requirements. The Rule addresses some key areas of the CWA Section 401 certification process, including timelines for review and action, the scope of certification review, and early engagement (pre-filing meetings). More information on the Rule is available at the following website: <https://www.epa.gov/CWA-401>

1. Important Considerations for Project Proponents:

a. Before submitting a request for an individual 401 water quality certification (WQC) to the certifying authority (State/Tribes/Environmental Agencies), a project proponent must request a pre-filing meeting with the certifying authority (State/Tribes/Environmental Agencies) at least 30 days prior to submitting the WQC request. The certifying authority (State/Tribes/Environmental Agencies) will determine if the meeting will be held, but submittal of the request for a meeting is required.

b. Applicants must submit their requests for WQC to the certifying authority (State/Tribes/Environmental Agencies) and to the Jacksonville District, Regulatory Division (RD) concurrently. Applicants are encouraged to copy RD on WQC requests submitted to a certifying authority (State/Tribes/Environmental Agencies) for a project within RD’s area of responsibility via email in accordance with the instructions included on the Jacksonville District RD website: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>

c. The Rule defines what a “request for 401 certification” entails. It specifies that a request must contain the following information:

(1) The project proponent(s) and a point of contact;

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- (2) the proposed project;
- (3) the applicable federal license or permit;
- (4) the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
- (5) a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge;
- (6) a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received;
- (7) documentation that a pre-filing meeting request was submitted to the certifying authority (State/Tribes) at least 30 days prior to submitting the certification request;
- (8) a certification statement as follows: “The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief”; and
- (9) a statement as follows: “The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time”.

2. WQC Request Timeframes:

The Rule requires that action on a WQC request must be taken by the certifying authority (State/Tribes/Environmental Agencies) within a reasonable period of time, but in no case later than one year after receipt of a certification request. Jacksonville District RD will establish the reasonable period of time on either a categorical or case-by-case basis, according to criteria prescribed by the Rule. The criteria used to establish the reasonable period of time are: (1) the complexity of the proposed project; (2) the nature of any potential discharge; and (3) the potential need for additional study or evaluation of water quality effects from the discharge. [Regulatory Guidance Letter \(RGL\) 19-02](#), entitled “Timeframes for Clean Water Act Section 401 Water Quality Certifications and Clarification of Waiver Responsibility” further addresses a reasonable period of time. RGL 19-02 includes that the 60 days identified in §325.2(b)(1)(ii) should generally be considered the default reasonable time period for 401 WQCs associated with Corps’ permitting actions. RD will work with each certifying authority (State/Tribes/Environmental Agencies) in our area of responsibility to establish a reasonable period of time on a categorical basis for projects that do not require complex evaluations or additional study/evaluation.

Upon receipt of a request for WQC, RD will provide the following information to the certifying authority (State/Tribes/Environmental Agencies) within 15 days: (1) the date of receipt; (2) the applicable reasonable period of time to act on the certification request; and (3) the date upon which waiver will occur if the certifying authority (State/Tribes/Environmental Agencies) fails or refuses to act on the certification request. Once the certifying authority (State/Tribes/Environmental Agencies) has received RD’s notice of the reasonable period of time, it may make a written request for extension, if necessary. If RD agrees to extend the reasonable period of time, the certifying authority (State/Tribes/Environmental Agencies) and project proponent shall be notified in writing. However, the reasonable period of time may not exceed one year.

The procedures outlined in this public notice are for the Jacksonville District Regulatory Division only. If submitting paperwork for another District’s Regulatory Division, please contact them first to determine their requirements. This procedure is effective on September 11, 2020. If you have any questions, please contact Tarrie Ostrofsky, Project Manager, Regulatory Division, North Permits Branch, Jacksonville Permits Section via email at Tarrie.L.Ostrofsky@usace.army.mil.