



US Army Corps
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Nashville District



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Application Requirements - Clean Water Act (CWA) Section 401 Certification Rule

Effective September 11, 2020, the “Clean Water Act (CWA) Section 401 Certification Rule” (Rule, 85 Federal Register 42,210 [July 13, 2020]) became effective nationwide. The Rule (40 CFR Part 121) establishes procedures that promote consistent implementation of the 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 of dredged or fill material into waters of the United States, a water quality certification (WQC) be issued to ensure that the discharge complies with applicable water quality requirements. The Rule addresses some key areas of the CWA Section 401 WQC process, including timelines for review and action, the scope of the WQC 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. **WQC Pre-Filing Meeting:** Before submitting a request for an individual Section 401 WQC to the certifying authority (state), in accordance with the new rule, a project proponent must request a pre-filing meeting with the state or tribe at least 30 days prior to submitting the Section 401 WQC request. The state will determine if the meeting will be held, but submittal of the request for a meeting is required.

Information regarding the WQC process and requirements for each state within the Nashville District's area of responsibility can be found at the following websites:

Tennessee:

<https://www.tn.gov/environment/permit-permits/water-permits1/aquatic-resource-alteration-permit--arap-.html>

pre-filing meeting request:

https://stateoftennessee.formstack.com/forms/arap_prefiling_meeting_request

Kentucky:

<https://eec.ky.gov/Environmental-Protection/Water/PermitCert/WQ401Cert/Pages/default.aspx>

Alabama:

<http://adem.alabama.gov/programs/water/401cert.cnt>

Mississippi:

<https://www.mdeq.ms.gov/permits/environmental-permits-division/about-epd/401-water-quality-certification/>

Virginia:

<https://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Regulations.aspx>

Note: Projects qualifying for a general Section 401 WQC are not required to request a pre-filing meeting. The state is the appropriate entity to determine the type of Section 401 WQC required for a specific project.

b. Applicants must submit their requests for Section 401 WQC to the state and their Department of the Army (DA) permit application or pre-construction notification and a copy of the Section 401 WQC request to the Nashville District, Regulatory Division (RD) concurrently. Applicants are encouraged to submit copies to RD electronically in accordance with the process outlined in Section 2 below.

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

- i. The project proponent(s) and a point of contact;
- ii. a description of the proposed project;
- iii. the applicable federal license or permit;
- iv. the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
- v. 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;
- vi. 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;
- vii. documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
- viii. 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
- ix. a statement as follows: "The project proponent hereby requests that the certifying authority review and take action on this CWA Section 401 certification request within the applicable reasonable period of time."

2. **Submittal Process:** RD has developed the following procedure for electronic submission of DA permit applications, pre-construction notifications and copies of associated Section 401 WQC requests:

a. All documents should be saved as a PDF document, and then submitted as an attachment in an email to the following email address: NashvilleRegulatory@usace.army.mil

You may send us files too large for email, up to 8 GB in size, through the DoD SAFE (Secure Access File Exchange) site at <https://safe.apps.mil/>. Send us an email at NashvilleRegulatory@usace.army.mil to request an access code to use the DoD SAFE site for each set of documents you would like to send us. Include "drop-off request" in the subject line of the email. Do not send paper copies of documents sent to us electronically.

b. For tracking and processing purposes, it is helpful if the email includes the following:

- i. Email Subject Line: include the name of the applicant, type of DA permit request, and location (County and State). Example: RE: Doe, John, DA Permit Application (or Pre-Construction Notification) and Section 401 WQC Request, Cabell County, West Virginia;
- ii. Email Body: 1) Brief description of the proposed project, 2) contact information (phone number, mailing address, and email address) for the applicant and/or their agent, and 3) the project location: Address and Latitude/Longitude in decimal degrees (e.g. 42.92788°, - 88.36257°).

3. **WQC Request Timeframes:** The Rule requires that action on a Section 401 WQC request must be taken by the certifying authority (state or tribe) within a reasonable period of time, but in no case later than one (1) year after receipt of a certification request. The Nashville 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. RD will work with each state in our AOR 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 Section 401 WQC, the RD will provide the following information to the certifying authority (state) 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 fails or refuses to act on the certification request. Once the state 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 state and project proponent shall be notified in writing. However, the reasonable period