



**US Army Corps  
of Engineers**

Louisville District ®

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# Public Notice

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## CLEAN WATER ACT SECTION 401 CERTIFICATION RULE

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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), a project proponent must request a pre-filing meeting with the state at least 30 days prior to submitting the WQC request. The state will determine if the meeting will be held, but submittal of the request for a meeting is required.

Note: Projects qualifying for a general WQC are not required to request a pre-filing meeting. The state is the appropriate entity to determine the type of WQC required for a specific project. Information regarding the WQC process and requirements for each state within the Louisville District’s area of responsibility can be found at the following websites:

Kentucky:

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

Indiana:

<https://www.in.gov/idem/wetlands/2344.htm>

Regulatory Division  
CLEAN WATER ACT SECTION 401 CERTIFICATION RULE

Illinois:

<https://www2.illinois.gov/epa/topics/forms/water-permits/401-water-quality-certification/Pages/default.aspx>

Ohio:

<https://www.epa.ohio.gov/dsw/401/permitting>

b. Applicants must submit their requests for WQC to the state and to the Louisville District, Regulatory Division (RD) concurrently. Applicants are encouraged to copy RD on WQC requests submitted to a state for a project within RD's area of responsibility via email 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:

- (1) The project proponent(s) and a point of contact;
- (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 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. Louisville District Regulatory Division (RD) WQC Request Submittal Process:**

RD has developed the following procedure for the public to submit Department of the Army (DA) Permit Applications and associated WQC requests electronically:

a. To submit DA Permit Applications and WQC requests electronically, all documents should be saved as a PDF document, and then submitted as an attachment in an email to the following email address: [CELRL.Door.To.The.Corps@usace.army.mil](mailto:CELRL.Door.To.The.Corps@usace.army.mil)

b. Your email should include the following:

1. Subject Line with the name of the applicant, type of request, and location (County and State). Example: RE: Doe, John, DA Permit Application and WQC Request, Jefferson County, KY
2. Brief description of the request and contact information (phone number, mailing address, and email address) for the applicant and/or their agent.
3. Project Location: Address and Latitude/Longitude in decimal degrees (e.g. 42.92788°, -88.36257°).

Regulatory Division  
CLEAN WATER ACT SECTION 401 CERTIFICATION RULE

Note: More information about the Corps Regulatory Program, including a fillable copy of the DA

Permit Application Form is available at the following website:

<https://www.lrl.usace.army.mil/Missions/Regulatory/>

c. All forms that require signature must be digitally signed or signed manually, scanned and then sent electronically.

d. Electronic documents must have sufficient resolution to show project details. In order to have the highest quality documents, the original digital documents should be converted to PDF rather than providing scanned copies of original documents.

e. The electronic application and attached documents must not exceed 10 megabytes (10MB).

Note: Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.

### **3. WQC Request Timeframes:**

The Rule requires that action on a WQC request must be taken by the certifying authority (state) within a reasonable period of time, but in no case later than one year after receipt of a certification request. LRL Regulatory Division (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 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) 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 of time may not exceed one year.

The procedures outlined in this public notice are for the Louisville 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 Eric Reusch, Chief, Mitigation, Compliance and Enforcement Branch via email at [Eric.G.Reusch@usace.army.mil](mailto:Eric.G.Reusch@usace.army.mil).