



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
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NEW ORLEANS, LA 70118-3651

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SPECIAL PUBLIC NOTICE  
ANNOUNCING THE CLEAN WATER ACT SECTION 401  
CERTIFICATION RULE

Section 401 of the Clean Water Act (CWA 401) requires water quality certifications for any federally licensed or permitted projects that may result in a discharge into waters of the United States. This certification process ensures that the discharge complies with applicable water quality requirements. On September 11, 2020, the Environmental Protection Agency (EPA), published the Clean Water Act Section 401 Certification Rule (85 Fed. Reg. 42,210 (July 13, 2020)). This CWA 401 Certification Rule (to be codified at 40 CFR Part 121) establishes standard procedures across the nation that promote consistent implementation of CWA Section 401 and regulatory certainty in the federal permitting process. In addition, this rule also 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.

The CWA Certification 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>

The US Army Corps of Engineers (USACE), New Orleans District (MVN) processes permit applications subject to Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. To comply with the requirements of the new CWA 401 Certification Rule, MVN requests that project proponents (Applicants) continue to follow the established procedures for submitting a MVN permit application. These procedures are different depending upon whether the project is located within the coastal zone or outside of the coastal zone, but both include options for electronic submission. These procedures are located at: <https://www.mvn.usace.army.mil/Missions/Regulatory/Permits/> Once your permit application is received, MVN will provide you with additional instructions if the proposed work is not already covered by a CWA Section 401 **general** water quality certification (WQC). Here are some important considerations for Applicants within MVN:

1. Before submitting a request for an **individual** CWA 401 WQC to the Louisiana Department of Environmental Quality (LDEQ), an Applicant must request a pre-filing meeting with the LDEQ at least 30 days prior to submitting the WQC request. LDEQ will determine if the meeting will be held, but submittal of the request for a meeting is required. For more information regarding the WQC process and requirements for the state of Louisiana, please go to the following LDEQ website: <https://www.deq.louisiana.gov/page/quality-certifications>

2. Projects qualifying for a **general** WQC are not required to request a pre-filing meeting. Before you request such a meeting and prior to submitting your USACE permit application, please confirm with MVN that a general WQC has not already been issued for your proposed work. This could potentially be the case if the proposed work is covered under a USACE/MVN programmatic general permit (PGP), general permit (GP), and/or nationwide permit (NWP) that has a general WQC.

3. Applicants must submit their requests for a WQC to LDEQ and to MVN's Regulatory Branch (MVN-Regulatory) concurrently. To do this, Applicants are required to copy the MVN-Regulatory project manager assigned to review the USACE permit application on the WQC request submitted to LDEQ.

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

- a. The project proponent(s) and a point of contact;
- b. the proposed project;
- c. the applicable federal license or permit;
- d. the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
- e. 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;
- f. 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;
- g. documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
- h. 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
- i. 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".

Please note that LDEQ may have additional requirements for the WQC request. For information on the WQC process and requirements for the state of Louisiana, please go to the following LDEQ website: <https://www.deq.louisiana.gov/page/quality-certifications>

5. 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. MVN 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. MVN will coordinate with the LDEQ 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, MVN will provide the following information to the LDEQ 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 MVN's notice of the reasonable period of time, it may make a written request for extension, if necessary. If MVN agrees to extend the reasonable period of time, LDEQ and the Applicant shall be notified in writing. However, the reasonable period of time may not exceed one year.