



PUBLIC NOTICE

US Army Corps
of Engineers
Memphis District

Sponsor: US Army Corps of Engineers

Issued: October 20, 2020

DISTRICT PUBLIC NOTICE - NOTIFICATION

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)) was implemented nationwide. The Rule (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 Illinois Environmental Protection Agency (IEPA), a project proponent must request a pre-filing meeting with the IEPA at least 30 days prior to submitting the WQC request. The IEPA 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 IEPA is the appropriate entity to determine the type of WQC required for a specific project. Information regarding the WQC process and requirements for Corps of Engineers Regulatory permits within Illinois (Chicago, Louisville, Memphis, Rock Island, and St. Louis Districts) can be found at the IEPA’s website below.

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

b. Applicants must submit their requests for WQC to the IEPA and to the applicable Corps Regulatory District concurrently. Applicants are encouraged to submit their requests for WQC via email in accordance with the process outlined in section 2 below.

c. The Rule defines what a “request for 401 certifications” 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 IEPA 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”;
- (9) A statement as follows: “The project proponent hereby requests that the IEPA review and take action on this CWA 401 certification request within the applicable reasonable period of time”.

2. **WQC Request Submittal Process:**

a. The Corps Districts in Illinois have developed the following procedure for the public to submit Department of the Army (DA) Permit Applications and associated WQC requests electronically:

b. 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 one of the following email addresses:

Rock Island: illinoismoregulatory@usace.army.mil

Chicago: ChicagoRequests@usace.army.mil

St. Louis: mvs-regulatory@usace.army.mil

Louisville: CELRL.Door.To.The.Corps@usace.army.mil

Memphis: CEMVMRegulatory@usace.army.mil

c. 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, Tazewell County, Illinois.
- (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°).

Note: More information about the Corps Regulatory Program, including a fillable copy of the DA Permit Application Form is available at the following websites:

Rock Island:

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

Chicago:

<https://www.lrc.usace.army.mil/Missions/Regulatory/Illinois.aspx>

St. Louis:

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

Louisville:

<https://www.lrl.usace.army.mil/Missions/Regulatory/Obtain-a-Permit/Nationwide/>

Memphis:

<https://www.mvm.usace.army.mil/About/Offices/Regulatory/Permits/>

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 20 megabytes (20MB).

Note: Multiple emails may be required to transmit documents to ensure the 20MB 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:**

a. The Rule requires that action on a WQC request must be taken by the IEPA within a reasonable period of time, but in no case later than one year after receipt of a certification request. The applicable Corps District 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;
- (3) The potential need for additional study or evaluation of water quality effects from the discharge.

b. The Corps will work with the IEPA to establish a reasonable period of time on a categorical basis for projects that do not require complex evaluations or additional study/evaluation.

c. Upon receipt of a request for WQC, the applicable Corps District will provide the following information to the IEPA within 15 days:

- (1) The date of receipt;
- (2) The applicable reasonable period of time to act on the certification request;
- (3) The date upon which waiver will occur if the IEPA fails or refuses to act on the certification request.

d. Once the IEPA 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 IEPA and project proponent shall be notified in writing. However, the reasonable period of time may not exceed one year.

e. The procedures outlined in this public notice are for the Corps Regulatory offices with jurisdiction in Illinois only. This procedure is effective on September 11, 2020. If you have any questions, please contact Samantha Chavez, Project Manager, Illinois/Missouri Branch via email at Samantha.J.Chavez@usace.army.mil.