



US Army Corps  
of Engineers  
Seattle District

# Special Public Notice

**Regulatory Branch**  
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**Telephone (206) 764-3495**  
**ATTN: Michelle Walker**

**Public Notice Date: September 25, 2020**

The U.S. Army Corps of Engineers, Seattle District (Corps) is issuing this Special Public Notice to announce the *Clean Water Act Section 401 Certification Rule* as it applies to Department of the Army permits for activities in Washington.

On July 13, 2020, the U.S. Environmental Protection Agency published the final *Clean Water Act Section 401 Certification Rule* (40 CFR Part 121) to update and clarify the procedural requirements for water quality certification under Section 401 of the Clean Water Act. Additional information, including the full text of the Final Rule, is available on EPA's website (<https://www.epa.gov/cwa-401>). The Final Rule became effective on September 11, 2020.

## **1. How does the Final Rule apply to Department of the Army permits?**

Under Section 401 of the Clean Water Act, a federal agency, such as the Corps, may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a certifying authority issues a Section 401 water quality certification verifying compliance with existing water quality requirements, the certifying authority waives the certification requirement, or the federal agency determines the certification requirement has been waived. An individual water quality certification or waiver is required for Department of the Army permits that would result in the discharge of dredged or fill material unless the discharge is for an activity where a general water quality certification has already been issued (i.e., certain Nationwide Permits (NWP) and all Regional General Permits (RGP)).

## **2. Who are the certifying authorities for activities in Washington?**

The certifying authority is the agency or tribe responsible for certifying compliance with applicable water quality requirements in accordance with Section 401 of the Clean Water Act. The certifying authorities in Washington are:

U.S. Environmental Protection Agency, Region 10 (EPA). EPA is the certifying authority for activities in Indian Country for tribes without treatment in a manner as a state. Indian Country includes lands within reservation boundaries, lands held in trust by the Federal Government outside of reservation boundaries, and "In-Lieu" sites (e.g., in-lieu fishing sites along the Columbia River). EPA is also the certifying authority on lands with exclusive Federal jurisdiction<sup>1</sup>.

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<sup>1</sup> To our knowledge there are no lands with exclusive federal jurisdiction in the state of Washington at this time.

Confederated Tribes of the Chehalis Reservation. The Confederated Tribes of the Chehalis Reservation is the certifying authority for activities on their respective tribal lands.

Confederated Tribes of the Colville Reservation. The Confederated Tribes of the Colville Reservation is the certifying authority for activities on their respective tribal lands.

Kalispel Tribe of Indians. The Kalispel Tribe of Indians is the certifying authority for activities on their respective tribal lands.

The Lummi Nation. The Lummi Nation is the certifying authority for activities on their respective tribal lands.

Makah Tribe. The Makah Tribe is the certifying authority for activities on their respective tribal lands.

Port Gamble S’Klallam Tribe. The Port Gamble S’Klallam Tribe is the certifying authority for activities on their respective tribal lands.

Puyallup Tribe of Indians. The Puyallup Tribe of Indians is the certifying authority for activities on their respective tribal lands.

Quinault Indian Nation. The Quinault Indian Nation is the certifying authority for activities on their respective tribal lands.

Spokane Tribe of Indians. The Spokane Tribe of Indians is the certifying authority for activities on their respective tribal lands.

Swinomish Indian Tribal Community. The Swinomish Indian Tribal Community is the certifying authority for activities on their respective tribal lands.

The Tulalip Tribes. The Tulalip Tribes is the certifying authority for activities on their respective tribal lands.

Washington State Department of Ecology. The Washington State Department of Ecology is the certifying authority for activities in Washington on all other lands not identified above.

### **3. What are the procedural changes in the certification process that affect applications for Department of the Army (DA) permits?**

Certain types of DA permits (i.e., Standard Permits and a small subset of NWP) require individual water quality certification while other activities already have a general water quality certification (i.e., many NWP and all RGP).

If your project requires individual water quality certification, the procedural changes include: (a) the requirement to submit a pre-filing meeting request to the certifying authority; (b) the content requirements

of a request for water quality certification; and (c) the requirement to submit the certification request to the certifying authority and the Federal permitting or licensing authority concurrently. (Please see the Final Rule for additional procedures not discussed in this notice).

- a) The regulations at 40 CFR Part 121.4 require the project proponent (i.e., permit applicant) request a pre-filing meeting with the certifying authority at least 30 days prior to submitting a request for water quality certification. The pre-filing meeting is similar to a “pre-application” meeting, but the certifying authority is not obligated to grant or respond to the pre-filing meeting request. The Final Rule does not set a limit on how early a project proponent may submit a pre-filing meeting request, but it must be at least 30 days prior to submitting a request for water quality certification.
- b) The regulations at 40 CFR Part 121.5 list the information that must be included to request an individual water quality certification as follows:
  - 1) Identify the project proponent(s) and a point of contact;
  - 2) Identify the proposed project;
  - 3) Identify the applicable federal license or permit (i.e., the Department of the Army permit);
  - 4) Identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
  - 5) Include 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) Include 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) Include documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
  - 8) Contain the following statement: *“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) Contain the following statement: *“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, the list above requires some information that is not currently included in the Joint Aquatic Resources Application (JARPA) and you will need to provide that additional information. Submitting only the JARPA will not result in a valid request for certification. During the review process, certifying authorities may request additional information to determine compliance with applicable water quality requirements under federal, state, and/or tribal laws. The Corps will determine the reasonable period of time for the certifying authority to take action on the certification request after submittal of a valid request.

#### **4. How do you submit a pre-filing meeting request to the certifying authority?**

The pre-filing meeting request should be submitted directly to the respective certifying authority based on the location of the activity as described in Item 2 above. The majority of actions will be under the purview of the Washington State Department of Ecology. On September 22, 2020, they published a Public Notice regarding pre-filing meetings which included a Pre-Filing meeting request form which you

can utilize to contact them. These documents are attached for informational purposes.

Pre-filing meeting requests may be submitted by email to the **Washington State Department of Ecology** at: [ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov), or to the **U.S. Environmental Protection Agency**, Region 10 at: [R10-401-Certs@epa.gov](mailto:R10-401-Certs@epa.gov) and [storm.linda@epa.gov](mailto:storm.linda@epa.gov) for actions on tribal lands not listed in Item 2 above.

If your project area is within the tribal lands of these tribes:

Pre-filing meeting requests may be submitted to the **Confederated Tribes of the Chehalis Reservation** at P.O. Box 536, Oakville, Washington 98568-0536.

Pre-filing meeting requests may be submitted to the **Confederated Tribes of the Colville Reservation** at P.O. Box 150, Nespelem, Washington 99155.

Pre-filing meeting requests may be submitted to the **Kalispel Tribe of Indians** at P.O. Box 39, Usk, Washington 99180-0039.

Pre-filing meeting requests may be submitted to the **Lummi Nation** at 2616 Kwina Road, Bellingham, Washington 98226.

Pre-filing meeting requests may be submitted to the **Makah Tribe** at P.O. Box 115, Neah Bay, Washington 98357-0115.

Pre-filing meeting requests may be submitted to the **Port Gamble S'Klallam Tribe** at 31912 Little Boston Road Northeast, Kingston, WA 98346-9700.

Pre-filing meeting requests may be submitted to the **Puyallup Tribe** at 3009 East Portland Avenue, Tacoma, Washington 98404.

Pre-filing meeting requests may be submitted to the **Quinault Indian Nation** at 1214 Aailis Drive, Taholah, WA 98587.

Pre-filing meeting requests may be submitted to the **Spokane Tribe** at P.O. Box 100, Wellpinit, Washington 99040-0100.

Pre-filing meeting requests may be submitted to the **Swinomish Indian Tribal Community** at 11430 Moorage Way, LaConner, WA 98257-9450.

Pre-filing meeting requests may be submitted to the **Tulalip Tribe** at 6700 Totem Beach Road, Tulalip, Washington 98271-9694.

## **5. After the pre-filing request has been submitted and 30 days have passed, how do you submit a certification request related to a Department of the Army permit?**

For projects which required individual water quality certification, the certification request, containing all the elements listed in Item 3.b. listed above, must be submitted to the respective certifying authority and to the Corps concurrently. Certification requests should be submitted to the certifying authority by the method identified in Item 4 above.<sup>2</sup> If the certification request is submitted by email, include both the certifying authority and the Corps in the same email.

If an individual water quality certification is required, after the 30 day pre-filing time period is the best time to submit permit application materials to the Corps with the certification request. This information should be submitted electronically to the Corps at [NWS-PermitApp@usace.army.mil](mailto:NWS-PermitApp@usace.army.mil) using the document naming conventions described in the attached document.

Certain types of DA permits (i.e., Standard Permits and a small subset of NWP) require individual water quality certification while other activities already have a general water quality certification (i.e., many NWP and all RGP). For those projects with a general water quality certification, a pre-filing and certification request do not need to be prepared and a permit application may be submitted directly to the Corps at any time.

## **6. What is the Corps doing to address the procedures in the Clean Water Act Section 401 Certification Rule?**

The Corps recognizes there will be a transition period as project proponents, consultants and members of the regulated public become familiar with the requirements of the Final Rule. Applications for Department of the Army permits for activities that require water quality certification submitted on or after September 11, 2020, will be subject to the 30-day pre-filing meeting request and certification request process, which may affect the timeline for an applicant to obtain a valid Department of the Army permit. The Corps encourages all permit applicants to complete the pre-filing meeting request requirement prior to submitting a permit application to the Corps.

The Corps is actively coordinating with the certifying authorities to address our procedures related to the Final Rule.

For additional information on the certification process, please contact the respective certifying authority as identified in Item 2 above.

For additional information on the Final Rule, please visit EPA's website at:  
<https://www.epa.gov/cwa-401/final-rule-clean-water-act-section-401-certification-rule>

For additional information on the Corps' Regulatory Program, including information on how to apply for a permit from the Seattle District, please see our website at:  
<https://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/>

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<sup>2</sup> The Corps is actively coordinating with certifying authorities to establish application procedures for situations in which the proposed work may meet a general water quality certification that has already been issued (i.e., some NWP with general 401 conditions and NWP specific 401 condition thresholds).



## Public Notice for Pre-Filing Meeting Requests and Section 401 Water Quality Certification Requests Submittals

Department of Ecology—SEA Program  
Attn: Loree' Randall  
ecyrefedpermits@ecy.wa.gov  
(360) 407-6076

**Public Notice Date:** September 22, 2020

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The U.S. Environmental Protection Agency's (EPA) new [Clean Water Act Section 401 Certification Rule](#) (Section 401 rule) took effect September 11, 2020. This means all Section 401 water quality certification requests submitted after September 11, 2020, must be consistent with the final rule ([40 CFR 121](#)).

The federal rule includes several process changes affecting project proponents (applicants). This public notice is intended to address the requirement for a *pre-filing meeting request* and subsequent *Section 401 water quality certification request*. The Washington State Department of Ecology (Ecology) will be issuing additional public notices regarding the other process changes to address the new EPA Section 401 rule in the near future.

Because the Section rule is now in effect, we want to provide information to project proponents regarding changes in how to apply for a Section 401 water quality certification. The rule requires that the project proponent follow these steps:

1. Request a pre-filing meeting with Ecology at least 30 days before submitting a Section 401 water quality certification request (see attached form).
2. A minimum of 30 days after submitting the pre-filing request, project proponents may submit a Section 401 water quality certification request. The request must be submitted concurrently to Ecology and the federal permitting agency (e.g. U.S. Army Corps of Engineers).
3. Section 401 water quality certification requests must satisfy the requirements of 40 CFR 121.5(b) or (c) of the new rule (see table 1). Please note that a Joint Aquatic Resource Permit Application (JARPA) alone does not satisfy the requirements of the new EPA rule.

To help streamline the process and reduce paper, project proponents must submit their pre-filing meeting requests and Section 401 water quality certification requests (with any supporting documents) to Ecology electronically at [ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov).

For more information about EPA's new Section 401 certification rule, please see [EPA's website](#).

**Table 1:  
Requirements for a Section 401 Water Quality Certification Request**

**Summary of 40 CFR 121.5(b) and (c)**

<b>Individual license or permit (121.5(b))</b>	<b>General license or permit (121.5(c))</b>
Identify the project proponent(s) and a point of contact;	Identify the project proponent(s) and a point of contact;
Identify the proposed project;	Identify the proposed categories of activities to be authorized by the general license or permit for which certification is requested;
Identify the applicable federal license or permit;	Include the draft or proposed general license or permit;
Identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;	Estimate the number of discharges expected to be authorized by the proposed general license or permit each year;
Include 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;	N/A
Include 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;	N/A
Include documentation a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;	Include documentation a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
Contain the following statement: “The project proponent hereby certifies that all information contained herein is true, accurate, and complete, to the best of my knowledge and belief;” AND	Contain the following statement: “The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief;” AND
The following statement: “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.”	The following statement: “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.”



**Washington State Department of Ecology  
Section 401 Water Quality Certification  
Pre-Filing Meeting Request Form**

AGENCY USE ONLY

Date Received:  
Aquatics ID#:  
County:  
Team:

**Why is this Pre-Filing Meeting Request Required?**

The U.S. Environmental Protection Agency published its Clean Water Act Section 401 Certification Rule in the Federal Register on July 13, 2020.<sup>1</sup> It took effect on September 11, 2020. The federal rule requires all project proponents submit a *pre-filing meeting request* to the certifying authority at least 30 days prior to submitting a Section 401 Water Quality Certification request (certification request). The Department of Ecology has prepared this pre-filing meeting request form to help project proponents comply with the federal rule requirements.

**Next Steps:**

Ecology will review your request for a pre-filing meeting to determine whether it is necessary or appropriate for a specific project. Completing this form will help with Ecology’s determination. Thank you for using this form.

1. Please submit this request form and, a project location map to Ecology’s Federal Permit Unit at: [ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov).
2. If a pre-filing meeting is scheduled, the meeting may be held in person or remotely. Please be prepared to discuss the project and potential water quality impacts.
3. If you do not receive a response to your request for a pre-filing meeting and at least 30 days have passed, you may submit the certification request to Ecology if a Section 401 certification is required for your project.

**For more information:**

EPA’s 401 rule: <https://www.epa.gov/cwa-401/final-rule-clean-water-act-section-401-certification-rule>

**Project Information**

<b>Project Name:</b>		
<b>Project Proponent</b>		
Name:		
Organization:		
Phone #:	E-Mail:	
<b>Project Location</b> <i>(Note: Please attach a project location map when submitting this form.)</i>		
Address:	City:	County:
Land ownership (check all that apply): <input type="checkbox"/> Private <input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Tribal		
Waterbody (including wetlands) that the project is in or adjacent to:		
Brief Project Description and Scope: <i>(Please include total quantities of fill and excavation in waters/wetlands, other direct and indirect impacts to waterbodies and wetlands, wetland habitat and habitat score, and whether adjacent to contaminated soil/sediment.)</i>		
What is your anticipated timeline for construction and operation?		

<sup>1</sup> 40 CFR Part 121

If you have already worked with any government agencies including Ecology on this project, list them below.

Agency Name	Contact Name	Phone/Email

Do you have any specific questions for Ecology?

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