**Template and Process for Clean Water Act Section 401 Certification Pre-filing Meeting Request**

November 2024

***DISCLAIMER****: This document provides a template for project proponents to follow when the U.S. Environmental Protection Agency acts as the certifying authority under CWA Section 401. This document is not a regulation, nor does it change or substitute for any applicable regulations. Thus, it does not impose legally binding requirements on the EPA, states, Tribes, other federal agencies or the regulated community. This document neither alters legal rights or obligations nor changes or creates law. In the event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling.*

Table of Contents

[**Instructions for Project Proponents Seeking to Request a Pre-filing Meeting with EPA Regions when EPA is the Certifying Authority** 2](#_Toc175036600)

[**CWA Section 401 Pre-filing Meeting Request Template** **when the EPA is the Certifying Authority** 5](#_Toc175036601)

[**Guide on How to Fill Out for the CWA Section 401 Pre-filing Meeting Request Template for when EPA is the Certifying Authority** 7](#_Toc175036602)

# **Instructions for Project Proponents Seeking to Request a Pre-filing Meeting with EPA Regions when EPA is the Certifying Authority**

**Step 1**: Determine whether EPA is the certifying authority for the project.

1. EPA acts as the certifying authority on behalf of states or Tribes that do not have authority to give such certification.
2. Currently, EPA acts as the certifying authority in two scenarios:
   1. On behalf of Tribes without “treatment in a similar manner as a state” (TAS) for Section 401 (see [the list of Tribes with TAS for Section 401](https://www.epa.gov/tribal/tribes-approved-treatment-state-tas))
   2. On lands of exclusive federal jurisdiction in relevant respects (see [the 2023 Rule preamble for examples of these areas](https://www.federalregister.gov/d/2023-20219/p-578)).

**Step 2**: Confirm which [EPA Region](https://www.epa.gov/aboutepa/regional-and-geographic-offices) the project is located in.

**Step 3**: Confirm whether the project requires a pre-filing meeting request, whether the EPA Region has categorically shortened the pre-filing meeting request period, or whether the EPA Region has waived the pre-filing meeting request requirement.

1. **If the pre-filing meeting request requirement is waived**, a pre-filing meeting request is not required.
   * The project proponent should confirm the requirements for requesting certification and the applicable submission procedures for the appropriate EPA Region prior to submitting the request for certification.
2. **If the pre-filing meeting request requirement has not been waived**, the project proponent should follow the process outlined in **Step 4** below.

**Step 4**: Submit a pre-filing meeting request to the EPA by sending an e-mail[[1]](#footnote-2) to the listed [EPA Regional point of contact](https://www.epa.gov/system/files/documents/2023-09/CWA%20Section%20401%20EPA%20Points%20of%20Contact%20-%20September%202023_508.pdf) with the following information[[2]](#footnote-3):

1. Subject Line: Pre-filing Meeting Request – CWA Section 401 Certification - [insert permit/license number] - [insert project title]
2. Completed pre-filing meeting request, including:
   1. A statement that it is “a request for CWA section 401 certification pre-filing meeting”;
   2. The name of the project proponent and appropriate point of contact;
   3. The name of the Tribe or jurisdiction for which the EPA is serving as the certifying authority;
   4. The planned project location[[3]](#footnote-4) (including identification of waters of the United States into which any potential discharges would occur);
   5. A list of any other necessary licenses/permits (e.g., state permits, other Federal permits, etc.);
   6. The project type and a brief description of anticipated project construction and operation activities; and
   7. The anticipated start work date.

* The project proponent should maintain a copy of the submitted pre-filing meeting request because it is a required component of the request for certification. *See* 40 CFR 121.5(b)(7).

**Step 5**: Process after the EPA Region responds or fails to respond to a pre-filing meeting request:

1. **If the EPA Region does not respond within 30 days** (or the applicable shortened pre-filing meeting request period), the project proponent may submit a request for certification.
2. **If the EPA Region responds within 30 days** (or within the applicable shortened pre-filing meeting request period) and informs the project proponent that it does not plan to host a pre-filing meeting, the project proponent may submit a request for certification once it reaches day 30 (or the applicable shortened pre-filing meeting request period).
3. **If the EPA Region responds within 30 days** (or within the applicable shortened pre-filing meeting request period) and informs the project proponent that a pre-filing meeting would be useful, the project proponent should coordinate with the EPA Region to schedule the pre-filing meeting. See **Step 6** for useful tips on the pre-filing meeting.
   * The project proponent is **not** required to wait until after the pre-filing meeting to submit a request for certification if the pre-filing meeting cannot be scheduled within 30 days of the submission of the pre-filing meeting request; however, it may make sense for the project proponent to wait to submit the request for certification until after confirming the request for certification requirements (consistent with 40 CFR 121.5) and the certifying authority’s applicable submission procedures during the pre-filing meeting.

**Step 6**: Pre-filing meeting tips

1. **Participants**: Participants in the pre-filing meeting include the project proponent (i.e., project team and/or representative) and certifying authority (i.e., EPA Region).
   * If applicable, the EPA recommends that the federal licensing or permitting agency be invited to attend the pre-filing meeting to answer any questions about the federal license or permit review process and timelines.
2. **Meeting Overview**: The EPA recommends that project proponents who attend a pre-filing meeting prepare to discuss the water quality-related impacts from the activity. Additional discussion/correspondence may include timing and ensuring that all the required contents of a request for certification, consistent with 40 CFR 121.5, are submitted in accordance with the EPA Region’s applicable submission procedures.
   * For example, the project proponent gives an overview of the project (including, but not limited to, visuals to show location, description of project work in waters/wetlands, projected work schedule/timeline, other important visuals for the project proposal, and any other necessary permits/consultations/authorizations that are required for the project).
   * The EPA and other participants may ask questions (e.g., what kind of baseline data has been collected already, such as wetland delineations and stream surveys; what is the desired project construction timeline; and what is the status of other authorizations/permit requirements/consultations). The EPA may also request additional information to help inform its evaluation of the project.
3. **Next Steps**: The EPA, project proponent, and federal licensing or permitting agency (as applicable) should discuss and identify tasks/timelines for submitting information and other next steps toward the project proponent’s submittal of the request for certification.

**For more information,** see [EPA’s website for the Final 2023 Rule](http://www.epa.gov/cwa-401/final-rule-clean-water-act-section-401-certification-rule). Refer to [Section IV.B](https://www.federalregister.gov/d/2023-20219/p-161) of the preamble for the Final 2023 Rule for more information regarding the EPA’s recommendations for implementation of the pre-filing meeting process.

# **CWA Section 401 Pre-filing Meeting Request Template** **when the EPA is the Certifying Authority**

*This template is for project proponents when the EPA acts as the certifying authority.*

\**indicates a required field*

## I. Attestation

**By signing below, I attest that [project proponent name] is requesting a pre-filing meeting with EPA Region [XX] consistent with 40 CFR 121.4.**

**\*Signature:** Click or tap here to enter text.

**\*Date:** Click or tap to enter a date.

## II. Project Proponent Information

**\*Project Proponent Name:**Click or tap here to enter text.

**\*Appropriate Point of Contact Information:**Click or tap here to enter text.

## III. Jurisdiction Information

**\*Name of Tribe/Jurisdiction for which EPA Region [XX] is serving as the certifying authority:**Click or tap here to enter text.

## IV. Planned Project Location

**\*Project Name or Title:**Click or tap here to enter text.

**\*Project Street Address (if applicable):**Click or tap here to enter text.

**\*Geographic Location**

Longitude (Decimal degrees, 4 places): Click or tap here to enter text.

Latitude (Decimal degrees, 4 places): Click or tap here to enter text.

*See below regarding attachment of a project location map to the pre-filing meeting request.*

**\*Identify waters of the United States into which any potential discharge would occur** (include acreage or linear feet of waters of the United States impacted): Click or tap here to enter text.

## V. Other Necessary Licenses/Permits

**\*List any other necessary licenses/permits** (e.g., state permits, other federal permits, etc.):

Click or tap here to enter text.

## VI. Project Description

**\*Project Type:**Click or tap here to enter text.

**\*Description of anticipated project construction and operation activities:**

*(This may include a description of the nature of the activity (i.e., project and scope), total quantities of fill and/or excavation in waters/wetlands, other direct and indirect impacts to waterbodies and wetlands, types of wetlands and/or whether project is adjacent to contaminated soil/sediment)*

Click or tap here to enter text.

## VII. Anticipated Start Work Date

**\*Anticipated start work date:**Click or tap to enter a date.

## VIII. Attachments

\*Project location map, with location marked; if possible, include any readily available geospatial information that characterizes site conditions and/or landscape features for this location as a shapefile or kmz file

Project drawings and site plan, if available

Project site photos, if available

Previous project permits, if available

Any relevant wetland/water reports, if available

## IX. Other

**Federal agency assigned license/permit identifier (if known):**Click or tap here to enter text.

**Do you have any specific questions for EPA Region [XX]?**Click or tap here to enter text.

**Provide two dates you are available for a meeting:**

Date: Click or tap to enter a date. Time: Click or tap here to enter text.

Date: Click or tap to enter a date. Time: Click or tap here to enter text.

# **Guide on How to Fill Out for the CWA Section 401 Pre-filing Meeting Request Template for when EPA is the Certifying Authority**

## I. Attestation

*Mandatory:* EPA’s regulations implementing the Clean Water Act Section 401 state that the project proponent shall request a pre-filing meeting with the certifying authority at least 30 days prior to submitting a request for certification in accordance with the certifying authority’s applicable submission procedures, unless the certifying authority waives or shortens the requirement for a pre-filing meeting request (40 CFR 121.4). By signing this attestation, the project proponent provides written documentation that a pre-filing meeting request has been made. The signature date should be formatted as (MM-DD-YYYY).

## II. Project Proponent Information

*Mandatory:* The project proponent must provide their name and information for the appropriate point of contact. This information could include:

1. First and last name;
2. Name of the company, agency, or entity where they work;
3. Title of their current position;
4. Current email address; and
5. Telephone number formatted as (XXX-XXX-XXXX).

## III. Jurisdiction Information

*Mandatory:* Include the EPA Region number as well as the name of the Tribe or jurisdiction for which the [EPA Region](https://www.epa.gov/aboutepa/regional-and-geographic-offices) is serving as the certifying authority.

## IV. Planned Project Location

*Mandatory:* The project proponent must include the name or title of the planned project as well as the street address for where the planned project will be located. The project proponent must also provide the latitude and longitude in decimal degrees to at least 4 places, e.g., 38.8925, -77.0303, for the planned project site. There are several online tools available for identifying the latitude and longitude of the planned project site.

The project proponent must identify waters of the United States into which any potential discharge would occur (include acreage or linear feet of waters of the United States impacted). Visit EPA’s website for more information on the [definition of “waters of the United States”](https://www.epa.gov/wotus). If the project proponent has specific questions about approved jurisdictional determinations, contact a [local U.S. Army Corps of Engineers District office](https://www.usace.army.mil/locations.aspx) or the [EPA](mailto:CWAwotus@epa.gov).

## V. Other Necessary Licenses/Permits

*Mandatory*: The project proponent must provide information on any other necessary licenses or permits they may need and/or have related to the planned project. If there are no other necessary licenses or permits, write “none”. The CWA does not provide a list of all federal licenses or permits subject to Section 401 certification, but indicates that affected federal licenses and permits are those that may result in a discharge into a water of the United States. Examples of federal licenses or permits that may trigger the need to seek Section 401 certification include:

* EPA-issued CWA Section 402 National Pollutant Discharge Elimination System permits for discharge of pollutants;
* Federal Energy Regulatory Commission certificates for construction/operation of interstate natural gas pipeline projects;
* CWA Section 404 (dredge and fill) permits issued by the U.S. Army Corps of Engineers;
* Shoreline permits issued by Tennessee Valley Authority for shoreline construction activities;
* Rivers and Harbors Act Section 10 permits issued by Corps for construction of wharfs, piers, etc.;
* Nuclear power plant licenses issued by Nuclear Regulatory Commission;
* Rivers and Harbors Section 9 permits issued by Corps (for construction of dams/dikes) and Coast Guard (for construction of bridges and causeways);
* Permits for wineries and distilleries issued by Alcohol and Tobacco Tax and Trade Bureau;
* Federal Energy Regulatory Commission licenses for construction/operation of non-Federal hydropower projects; and
* Mine plans of operation for mining activities on National Forest Service Lands approved by the U.S. Forest Service.

## VI. Project Description

*Mandatory:* The project proponent must provide the project type. Examples of project types subject to Section 401 are provided in Section V (Other Necessary Licenses/Permits). The project proponent must also provide a description of the anticipated project construction and operation activities. This description may include:

* Description of the nature of the activity (i.e., project purpose and scope);
* Total quantities of fill and excavation in waters/wetlands;
* Direct and indirect impacts to waterbodies and wetlands;
* Type of wetlands within and/or adjacent to planned project site; and
* Whether the project is adjacent to contaminated soil/sediment.

*Project Purpose:* Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project.

*Nature of the Activity:* Describe the overall activity or project. Give appropriate dimensions of structures, such as wing walls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles or float-supported platforms.

## VII. Anticipated Start Work Date

*Mandatory*: The project proponent must include the anticipated start work date, if available. The date should be formatted as (MM-DD-YYYY). If there is no known start work date, then write “unknown.”

## VIII. Attachments

*Mandatory:* If available, the project proponent should include an attachment of the project location map, with the location of the planned project marked.

*Optional*: The project proponent may provide any readily available geospatial information that characterizes site conditions for the given project location as a shapefile and/or kmz file. The project proponent may also provide project drawings, site plans and project site photos (if available). Maps should include a scale bar and north arrow. If the project proponent has had licenses or permits issued for this project in the past, but those licenses and/or permits have expired, it would be helpful to attach such prior licenses/permits. In addition, include any available wetland and/or water reports.

## IX. Other

*Optional*: If the project proponent already submitted an application for a federal license or permit and received a license or permit application identifier from the federal agency (i.e., application number), the project proponent may provide that information.

The project proponent may provide two dates they are available for the pre-filing meeting. Dates should be formatted as (MM-DD-YYYY). Also include a time alongside the date with which the project proponent is available for the pre-filing meeting.

The project proponent may provide any questions they may have for the EPA Region. For example, *what are the EPA Region’s applicable submission procedures,* or *where can they find the EPA Region’s applicable submission procedures?*

1. For those project proponents who do not have ready access to email, the EPA advises the project proponent to work with the EPA Regional point of contact to identify an alternative method to provide the pre-filing meeting request. [↑](#footnote-ref-2)
2. Note that the contents recommended here are not a regulatory requirement and do not apply to non-EPA certifying authorities. Other certifying authorities may develop their own recommended or required contents and applicable submission procedures for pre-filing meeting requests. [↑](#footnote-ref-3)
3. If possible, include a map of the project location and any readily available geospatial information that characterizes site conditions and/or landscape features for this location as a shapefile or kmz file. [↑](#footnote-ref-4)