**Template and Process for a CWA Section 401 Request for Certification when the EPA is the Certifying Authority**

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.*

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# **Instructions for Project Proponents Seeking a Section 401 Certification for an Individual Federal License or Permit When EPA is the Certifying Authority**

***This template generally applies to requests for certification on all individual federal licenses or permits, U.S Army Corps of Engineers Civil Works projects, and authorizations under Corps General Permits when the 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**: Submit a request for certification to the appropriate EPA Region.

1. **Consistent with 40 CFR 121.5(a)(1) and (b), a request for certification on an individual federal license or permit when the EPA is the certifying authority must:**

* Be in writing, signed, and dated by the project proponent;
* Include a copy of the Federal license or permit application[[1]](#footnote-2);
* Include any readily available water quality-related materials that informed the development of the application; and
* If not already included in the materials listed above, include as applicable:
  + A description of the proposed activity, including the purpose of the proposed activity and the type(s) of discharge(s) that may result from the proposed activity;
  + The specific location of any discharge(s) that may result from the proposed activity;
  + A map or diagram of the proposed activity site, including the proposed activity boundaries in relation to local streets, roads, and highways;
  + A description of current activity site conditions, including but not limited to relevant site data, photographs that represent current site conditions, or other relevant documentation;
  + The date(s) on which the proposed activity is planned to begin and end and, if known, the approximate date(s) when any discharge(s) may commence;
  + A list of all other federal, interstate, Tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization; and
  + Documentation that a pre-filing meeting request was submitted to the certifying authority in accordance with applicable submission procedures, unless the pre-filing meeting request requirement was waived.

1. **Submission Instructions**: Submit the information in the template below to the appropriate [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). Include in the subject line the following: “Request for Certification – CWA Section 401 Certification – [insert permit/license number] – [insert project title].”

**Step 4:** The EPA Region will review your request for certification in accordance with 40 CFR 121.5.

1. **For requests for certification that meet the requirements at 40 CFR 121.5**, the EPA Region will send written confirmation to the project proponent and federal agency of the date that a request for certification is received by the EPA Region in accordance with its applicable submission procedures*.*
2. **For requests for certification that do not meet the requirements at 40 CFR 121.5**, the EPA Region will contact the project proponent to notify them that the request for certification did not meet the requirements at 40 CFR 121.5 and identify the missing components, as applicable.

# **CWA Section 401 Request for Certification Template for an Individual Federal License or Permit 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. 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.

## II. Minimum Contents - 121.5(a)(1):

**Attachments**

\* Copy of the Federal license or permit application for the individual Federal license or permit

\* Any readily available water quality-related materials that informed the development of the application

## III. Additional Contents - 121.5(b):

### 1. Project Description:

**\*Description of the proposed activity** (including the purpose of the proposed activity and the type(s) of discharge(s) that may result from the proposed activity):

Click or tap here to enter text.

### 2. Location of Discharge(s):

**\*Specific location of any discharge(s) that may result from the proposed activity:**

Click or tap here to enter text.

### 3. Project Location:

**Attachments**

\* Project location map, including the proposed activity boundaries in relation to local streets, roads and highways

Project drawings and site plan, if available

### 4. Current Activity Site Conditions:

**\*Description of current activity site conditions:**

Click or tap here to enter text.

**Attachments**

Photographs that represent current site conditions, if available

Relevant site data, if available (describe): Click or tap here to enter text.

Other relevant documentation (describe): Click or tap here to enter text.

### 5. Planned Work Dates:

**\*Planned start work date for the proposed activity:**Click or tap to enter a date.

**\*Planned end work date for the proposed activity:**Click or tap to enter a date.

**\*Approximate date(s) when any discharge(s) may commence, if known:**

Click or tap here to enter text.

### 6.  Authorizations:

**\*List all other** **federal, interstate, Tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization:**

Click or tap here to enter text.

### 7. Other Documentation:

**Attachments**

\* Pre-filing meeting request documentation (e.g., documentation that a pre-filing meeting request was submitted to EPA Region XX in accordance with applicable submission procedures, unless the pre-filing meeting request requirement was waived)

Previous project licenses or permits, if available

Any relevant wetland/water reports, if available

Other (describe): Click or tap here to enter text.

## IV. Attestation:

**By signing below, I attest that this is [project proponent name]’s request for certification for an individual federal license or permit to EPA Region [XX] in accordance with its applicable submission procedures and 40 CFR 121.5.**

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

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

# **Instructions for Project Proponents Seeking a Section 401 Certification for the Issuance of a General Federal License or Permit when the EPA is the Certifying Authority**

***This template generally applies to requests for certification on the issuance of a general federal license or permit when the 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**: Submit a request for certification to the appropriate EPA Region.

1. **Consistent with 40 CFR 121.5(a)(1) and (b), a request for certification on the issuance of a general federal license or permit when the EPA is the certifying authority must:**

* Be in writing, signed, and dated by the project proponent;
* Include a copy of the draft Federal license or permit[[2]](#footnote-3);
* Include any readily available water quality-related materials that informed the development of the draft Federal license or permit; and
* If not already included in the materials listed above, include as applicable:
  + A description of the proposed activity, including the purpose of the proposed activity and the type(s) of discharge(s) that may result from the proposed activity;
  + The specific location of any discharge(s) that may result from the proposed activity;
  + A map or diagram of the proposed activity site, including the proposed activity boundaries in relation to local streets, roads, and highways;
  + A description of current activity site conditions, including but not limited to relevant site data, photographs that represent current site conditions, or other relevant documentation;
  + The date(s) on which the proposed activity is planned to begin and end and, if known, the approximate date(s) when any discharge(s) may commence;
  + A list of all other Federal, interstate, Tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization; and
  + Documentation that a pre-filing meeting request was submitted to the certifying authority in accordance with applicable submission procedures, unless the pre-filing meeting request requirement was waived.

1. **Submission Instructions**: Submit the information in the template below to the appropriate [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). Include in the subject line the following: “Request for Certification – CWA Section 401 Certification – [insert permit/license number] – [insert project title].”

**Step 4:** The EPA Region will review your request for certification in accordance with 40 CFR 121.5.

1. **For requests for certification that meet the requirements at 40 CFR 121.5**, the EPA Region will send written confirmation to the project proponent and federal agency of the date that a request for certification is received by the EPA Region in accordance with its applicable submission procedures*.*
2. **For requests for certification that do not meet the requirements at 40 CFR 121.5**, the EPA Region will contact the project proponent to notify them that the request for certification did not meet the requirements at 40 CFR 121.5 and identify the missing components, as applicable.

# **CWA Section 401 Request for Certification Template** **for the Issuance of a General Federal License or Permit** **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. 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.

## II. Minimum Contents - 121.5(a)(2):

**Attachments**

\*  Copy of the draft Federal license or permit

\*  Any readily available water quality-related materials that informed the development of the draft Federal license or permit

## III. Additional Contents - 121.5(b):

### 1. Project Description:

**\*Description of the proposed activity** (including the purpose of the proposed activity and the type(s) of discharge(s) that may result from the proposed activity):

Click or tap here to enter text.

### 2. Location of Discharge(s):

**\*Specific location of any discharge(s) that may result from the proposed activity:**

Click or tap here to enter text.

### 3. Project Location:

**Attachments**

\* Project location map, including the proposed activity boundaries in relation to local streets, roads and highways

Project drawings and site plan, if available

### 4. Current Activity Site Conditions:

**\*Description of current activity site conditions:**

Click or tap here to enter text.

**Attachments**

Photographs that represent current site conditions, if available

Relevant site data, if available

Other relevant documentation (describe): Click or tap here to enter text.

### 5. Planned Work Dates:

**\*Planned start work date for the proposed activity:**Click or tap to enter a date.

**\*Planned end work date for the proposed activity:**Click or tap to enter a date.

**\*Approximate date(s) when any discharge(s) may commence, if known:**

Click or tap here to enter text.

### 6. Authorizations:

**\*List all other** **federal, interstate, Tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization:**

Click or tap here to enter text.

### 7. Other Documentation:

**Attachments**

\*  Pre-filing meeting request documentation (e.g., documentation that a pre-filing meeting request was submitted to EPA Region XX in accordance with applicable submission procedures, unless the pre-filing meeting request requirement was waived)

Previous project permits, if available

Any relevant wetland/water reports, if available

Other (describe): Click or tap here to enter text.

## IV. Attestation:

**By signing below, I attest that this is [project proponent name]’s request for certification for the issuance of a general federal license or permit to EPA Region [XX] in accordance with its applicable submission procedures and 40 CFR 121.5.**

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

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

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

*Note: Information in Section II has been separated to account for the differences in requirements between the minimum contents – 121.5(a)(1) for an individual federal license or permit and minimum contents – 121.5(a)(2) for the issuance of a general federal license or permit. All other information, i.e., Sections I, III, and IV, may be used for assistance when filling out both the individual federal license or permit template as well as the issuance of a general federal license or permit template.*

## I. 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 in which they work for;
3. Title of their current position;
4. Current email address; and
5. Telephone number formatted as (XXX-XXX-XXXX).

## II. Minimum Contents - 121.5(a)(1): Individual Federal License or Permit

*Mandatory:* Where a project proponent is seeking certification for an individual Federal license or permit from any certifying authority, the request for certification must include the following minimum contents: (i) A copy of the Federal license or permit application submitted to the Federal agency; and (ii) Any readily available water quality-related materials that informed the development of the application.

## II. Minimum Contents - 121.5(a)(2): Issuance of a General Federal License or Permit

*Mandatory:* Where a project proponent is seeking certification for the issuance of a general federal license or permit from any certifying authority, the request for certification must include the following minimum contents: (i) A copy of the draft Federal license or permit; and (ii) Any readily available water quality-related materials that informed the development of the application.

## III. Additional Contents – 121.5(b)

### 1. Project Description

*Mandatory:* The project proponent must provide a description of the proposed activity, including the purpose of the proposed activity and the type(s) of discharge(s) that may result from the proposed activity. This description may include a description of the nature of the activity and project purpose and scope.

*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.

### 2. Location of Discharge(s)

*Mandatory:* The project proponent must provide the latitude and longitude in decimal degrees to 4 places, e.g., 38.8925, -77.0291, of specific locations of any discharge(s) that may result from the proposed activity.

### 3. Project Location

*Mandatory:* The project proponent must include an attachment of the project location map, including the proposed activity boundaries in relation to local streets, roads and highways

*Optional:* The project proponent may also provide available project drawings and site plans, including a scale bar and north arrow in any maps.

### 4. Current Activity Site Conditions

*Mandatory:*The project proponent must include a description of current activity site conditions. The project proponent may include the following components in the description:

* 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.

*Optional*: The project proponent may include any relevant site data, photographs that represent current site conditions or other relevant documentation. They may also provide any readily available geospatial information that characterizes site conditions for the given project location as a shapefile and/or kmz file.

### 5. Planned Work Dates

*Mandatory*: The project proponent must include the planned start work date and end work date, if available. The date should be formatted as (MM-DD-YYYY). If there is no known start and end work date, then write “unknown.” The project proponent must also include the approximate date(s) when any discharge(s) may commence, if available. Again, the date should be formatted as (MM-DD-YYYY). If there is no known date, then write “unknown.”

### 6. Authorizations

*Mandatory*: The project proponent must provide information on all other federal, interstate, Tribal, state, territorial, or local agency authorizations required for the proposed activity as well as the current status of each authorization. If there are no other licenses or permits, write “none.”

### 7. Other Documentation

*Mandatory:* The project proponent must include documentation of their pre-filing meeting request unless the pre-filing meeting request requirement was waived.

*Optional*: If the project proponent has had permits issued for this project in the past, but those licenses and/or permits have expired, it would be helpful to attach the prior licenses/permits as well. Also, include any available wetland and/or water reports.

## IV. Attestation

*Mandatory:* 40 CFR 121.4 provides that the project proponent may not submit a request for certification unless it requests a pre-filing meeting with the certifying authority at least 30 days prior or the certifying authority waives or shortens the requirement for a pre-filing meeting request. By signing this attestation, the project proponent provides written documentation that a request for certification has been made. Include a signature and signature date formatted as (MM-DD-YYYY).

1. With regards to project proponents seeking project-specific certification to obtain authorization under a Corps general permit, project proponents must submit the minimum contents defined at 40 CFR 121.5(a)(1). For example, if the EPA acting as a certifying authority denied certification on the issuance of a Corps’ general permit, the project proponent would need to obtain a project-specific certification or waiver from the EPA to obtain authorization under that general permit. In those cases, the “application” part of the request for certification may take the form of a pre-construction notification or PCN, along with any readily available water quality-related materials that informed the development of the application (e.g., the general permit). Regarding individual projects that do not involve an “application” or a “license or permit” but still require certification, like Corps’ civil works projects, the Agency expects the project proponent to provide documents in lieu of the application that are similar in nature, such as a “project study” when requesting certification. [↑](#footnote-ref-2)
2. With regards to project proponents seeking project-specific certification to obtain authorization under a Corps general permit, project proponents must submit the minimum contents defined at 40 CFR 121.5(a)(1). For example, if the EPA acting as the certifying authority denied certification on the issuance of a Corps’ general permit, the project proponent would need to obtain a project-specific certification or waiver from the EPA to obtain authorization under that general permit. In those cases, the “application” part of the request for certification may take the form of a pre-construction notification or PCN, along with any readily available water quality-related materials that informed the development of the application (e.g., the general permit). Regarding individual projects that do not involve an “application” or a “license or permit” but still require certification, like Corps’ civil works projects, the Agency expects the project proponent to provide documents in lieu of the application that are similar in nature, such as a “project study” when requesting certification. [↑](#footnote-ref-3)