

SECTION 401 WATER QUALITY CERTIFICATION PROCESS

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Objectives

- Section 401 Water Quality Certification (WQC) Rule
- Definitions
- Certification Information
- Process



New 401 WQC Rule Clean Water Act (CWA)

- Section 401 of the CWA requires that:

Any applicant for a federal license or permit which may result in a discharge into waters of the United States must obtain a Water Quality Certification (WQC) from the Certifying Authority that the discharge complies with all applicable water quality requirements.



Definitions

- **Project proponent:** Permit applicant
- **Federal licensing or permitting agency:** U.S. Army Corps of Engineers (Corps)
- **Certifying Authority (CA):** State, authorized tribes, or the U.S. Environmental Protection Agency (EPA).
- **Authorized tribes:** Tribes with delegated authority for Section 401 WQC in Utah (Navajo Nation and Ute Mountain Ute Tribe)



Certification Information

- Effective September 11, 2020
- When is Section 401 WQC required?
 - Potential for
 - The federally licensed or permitted activity
 - To result in a discharge from a point source
 - In waters of the U.S.
- The 401 WQC regulation is located at 40 CFR Part 121.



Process

- Prefiling meeting request to the CA (starts 30-day wait period)
- 401 Certification Request* (application submittal): Must be submitted concurrently to the CA and the Federal Agency.
 - Completeness = 9 elements

* 401 Certification Request is independent of the DA permit application.



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9 Elements

1. Project proponent;
2. Proposed project;
3. Applicable federal license or permit;
4. Location and nature of discharges* and the location of receiving waters;
5. Methods and means to monitor the discharge and equipment to be used;

* Includes the amounts and area of the proposed fill/discharge into waters of the U.S..



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9 Elements cont'n

6. List of all other authorizations required for the proposed project;
7. Documentation for prefilings meeting 30-days prior certification request;



9 Elements cont'n

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.'*



Reasonable Period of Time

- 401 Certification Request is submitted:
 - ▶ Corps issues Reasonable Period of Time to CA (within 15 days of receipt)
 - 60 days = General Permits/Nationwide permits
 - 90 days = Letters of Permission/Individual Permits
 - 120 days = Corps-lead Environmental Impact Statement

*The CA may request an extension, but not to exceed 1 year.
Extension decision is at the Corps discretion.



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Neighboring Jurisdiction Review

For 401 decisions issued within the established reasonable period of time:

- Corps notifies EPA of CA's 401 decision to issue (within 5 days of receipt).
- EPA has 30 days to conduct neighboring jurisdiction review.



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Neighboring Jurisdiction (NJ)

- EPA review process:
 - If EPA does not exercise neighboring jurisdiction authority, ACOE can move forward with permit decision.
 - If EPA determines the discharge “may affect. . . the quality of the waters of any other downstream Jurisdiction (State/Tribe), the EPA will notify the other Jurisdiction (and the ACOE). The downstream jurisdiction will have 60 days to determine impacts to its water quality requirements and object to the issuance of the permit and require a public hearing on the objection.



NJ cont'n

- Federal permit decision must wait for EPA's decision on neighboring jurisdiction.
- Neighboring Jurisdiction Process - Required for ALL individual 401 WQC actions, including non-notifying Nationwide Permits.



NWP and WQC in UT

- **EPA Region 8:** Certified 11 NWPs with conditions. For NWPs that have been denied, individual Section 401 WQC is required.
- **Utah Department of Environmental Quality, Division of Water Quality:** Certified all NWPs with conditions.
- **Navajo Nation:** The Navajo Nation denied Section 401 WQC for their tribal lands in Arizona, New Mexico, and Utah. Individual Section 401 WQC is required for all activities on Navajo Nation lands.
- **Ute Mountain Ute Tribe:** The Ute Mountain Ute Tribe denied Section 401 WQC for their Tribal lands in Colorado, New Mexico, and Utah. Individual Section 401 WQC is required for all activities on all Ute Mountain Ute Tribe lands.

<https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits/>

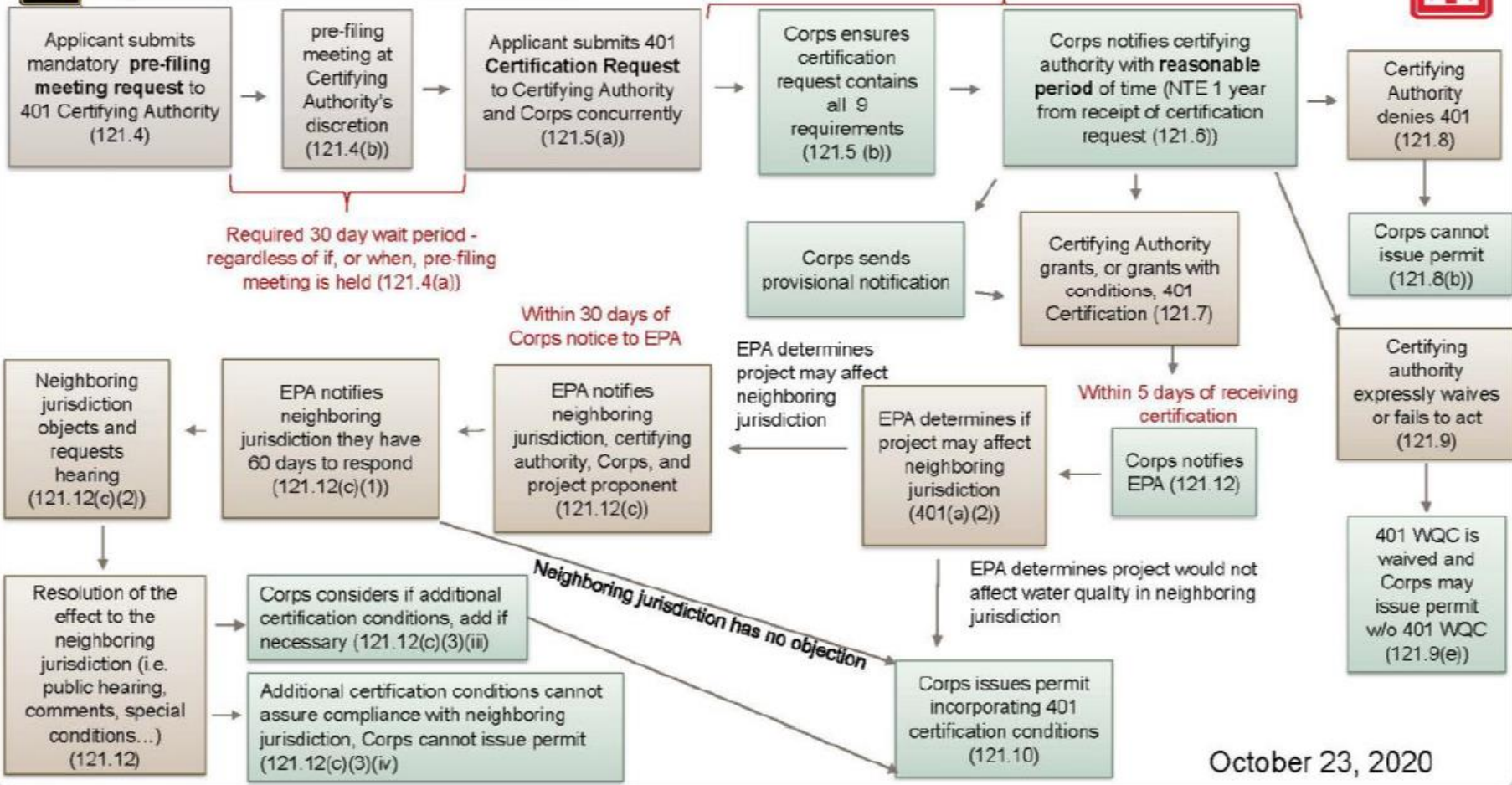


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401 process and timeline

Within 15 days of receipt of certification request



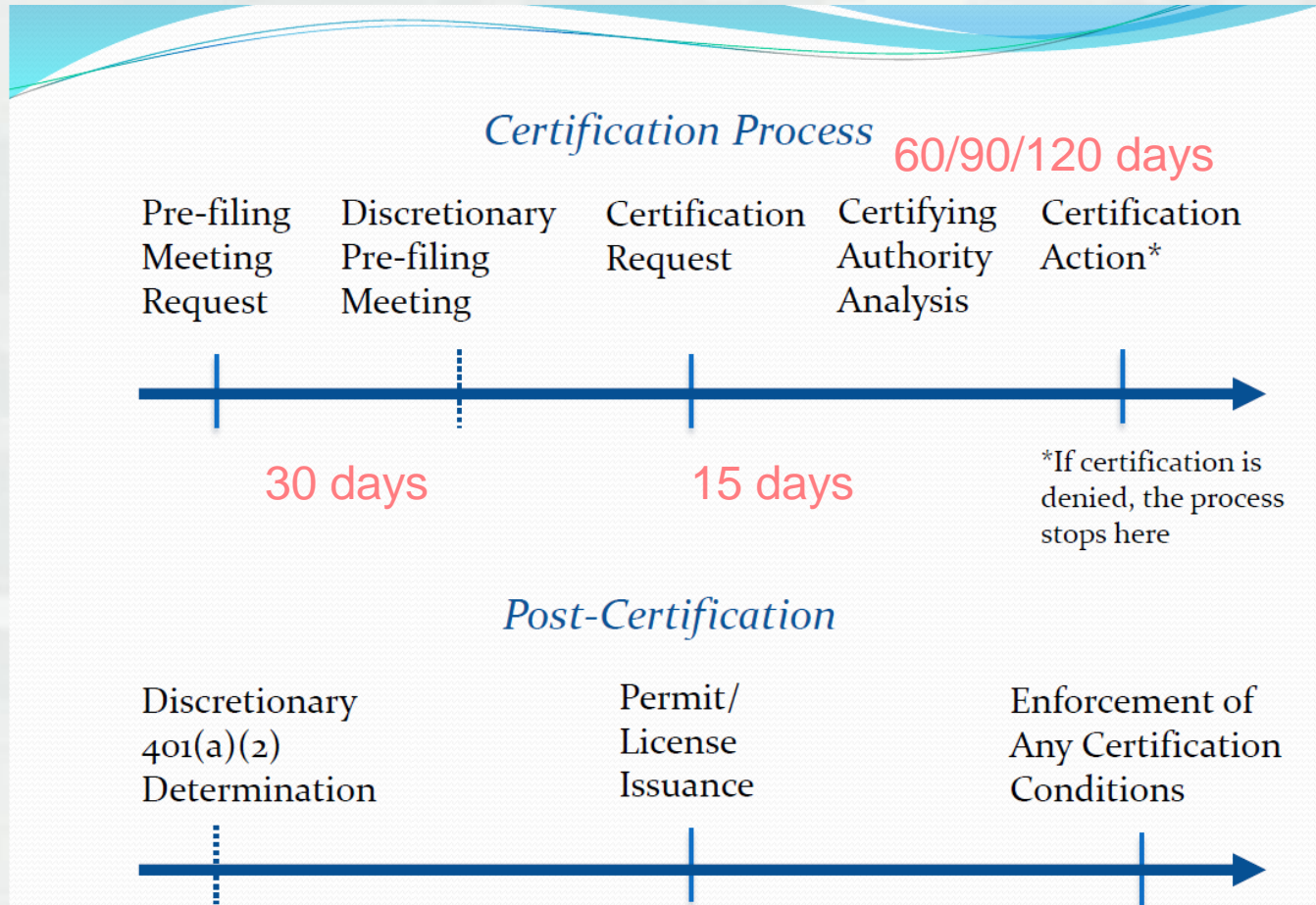
October 23, 2020

CWA Section 401 Certification Process Flowchart



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Timeframe



Questions?



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