

SECTION 401 WATER QUALITY CERTIFICATION PROCESS

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November 1, 2023



U.S. ARMY



US Army Corps
of Engineers®



OBJECTIVES

- Section 401 Water Quality Certification (WQC) Rule
- Definitions
- General WQC Information
- Individual WQC Process
- New 401 WQC rule



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): Responsible for issuing WQCs. Includes States, authorized tribes, and the U.S. Environmental Protection Agency (EPA).

Authorized tribes: Tribes with delegated authority for section 401 certification (Navajo Nation, Ute Mountain Ute Tribe, and the Confederated Tribes of the Goshute Reservation)



CERTIFYING AUTHORITIES FOR THE STATE OF UTAH

- The Utah Department of Environmental Quality, Division of Water Quality (DEQ) is the CA for non-Tribal lands in Utah.
- The Navajo Nation, Ute Mountain Ute Tribe, and the Confederated Tribes of the Goshute Reservation are the CA for their lands.
 - Corps permits on the Navajo Nation Reservation are processed by the Albuquerque district.
- On all other Tribal lands in Utah, Region 8 of the EPA is the CA.



GENERAL 401 WATER QUALITY CERTIFICATIONS

- The Utah DEQ has issued general Section 401 WQCs for all Corps General Permits (Nationwide Permits, Programmatic General Permits, and Regional General Permits).
 - This means that projects authorized under these Corps permits on non-Tribal lands in Utah are “pre-certified” under Section 401, provided all conditions of the general WQC are followed.
- For general permits on Tribal land, an individual WQC would be required if the appropriate CA has not issued an associated general WQC.
- To view the general water quality certifications that apply to Corps permits in Utah, including their conditions, please visit our website at:
<https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits/NWP-UT-Summary-Table/>



CERTIFICATION STATUS OF NWPS

EPA Region 8

- Certified subject to conditions: NWP 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 46, 59
- Expressly waived: NWP 4, 22, 48, 54
- Not certified: NWP 1, 2, 8, 9, 10, 11, 12, 16, 17, 21, 24, 28, 29, 34, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 53, 55, 56, 57, 58

Navajo Nation

- Not certified: All NWPs

Ute Mountain Ute Tribe

- Certified subject to conditions: NWP 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 38, 41, 43, 45, 46, 57, 59
- Expressly waived: NWP 4, 22, 48, 54
- Not certified: NWP 1, 2, 8, 9, 10, 11, 12, 16, 17, 21, 24, 28, 29, 34, 35, 37, 39, 40, 42, 44, 49, 50, 51, 52, 53, 55, 56, 58

Utah DEQ

- Certified subject to conditions: all NWPs



GENERAL WATER QUALITY CERTIFICATION CONDITIONS

- Projects that are authorized under a general WQC must adhere to all applicable certification conditions.
- Condition 1 of the general WQCs issued by the UT DEQ require notification to the CA (the DEQ) under certain circumstances.
- **It is the project proponent's responsibility to notify the DEQ if proceeding under a general permit on non-Tribal lands in Utah and any of these circumstances apply.**
- Projects authorized under the non-notifying provision of a NWP may require notification to the DEQ.



UT DEQ NOTIFICATION REQUIREMENTS FOR NON NOTIFYING PERMITS

Notification to the UT DEQ is required by the **project proponent** for the following projects:

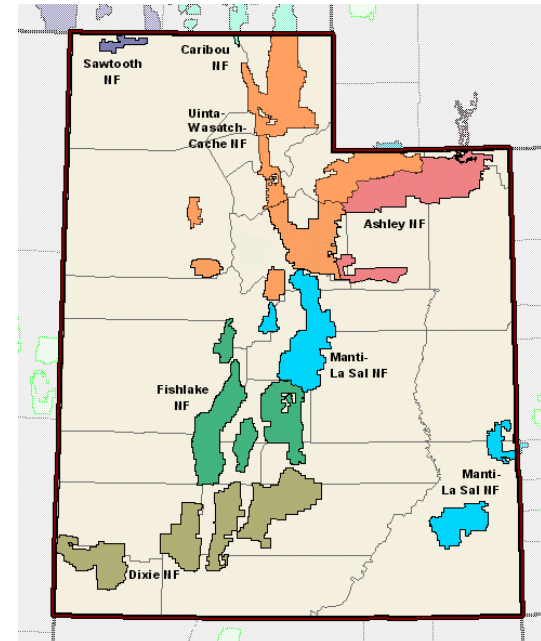
- Any project proposed under NWP 3, NWP 37, and NWP 27 where PCN is required.
- Any project proposed under a NWP where the project will be within 500 feet of the water's edge of the Great Salt Lake, Utah Lake, and Bear Lake.
- Any project with a potential discharge into an impaired waterbody with an approved Total Maximum Daily Load (TMDL), where the project has the potential to discharge a pollutant identified/addressed by the TMDL.
- Any project proposed under a Corps general permit with a potential discharge into Category 1 or Category 2 waters.



CATEGORY 1 & 2 WATERS

- Category 1 & 2 waters are generally limited to U.S. Forest Service managed lands. If the project would potentially result in a discharge into waters within the Forest Service boundary, notification to the UT DEQ is required.
- The following link will take you to the UT DEQ Beneficial Uses and Water Quality Assessment Map where you can view information on specific water bodies, such as if they have an approved TMDL or are a Category 1 or 2 water:

<https://wq.deq.utah.gov/>





UT DEQ NOTIFICATION PROCESS

- For notification to the DEQ, please submit a Corps PCN and any other available information regarding the project's potential impacts to water quality.
- Submit to Linsey Shafer at lrshafer@utah.gov
- The DEQ has 14 calendar days to review the project and respond with comments.
 - The DEQ will determine if the project is authorized by the general WQC or if an individual WQC is required.
 - If no comments are received within 14 days, it is assumed that the DEQ has no comments or objections, and the notification process is considered complete.



INDIVIDUAL CERTIFICATION

- 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.
- An individual water quality certification is required for all projects where a general water quality certification has not been granted.



INDIVIDUAL CERTIFICATION PROCESS

- Prefiling meeting request (starts 30 day wait period)
 - Certification request: Must be submitted concurrently to the certifying authority and the Federal Agency. Completeness = 9 elements
- * Certifying request is independent of the DA permit application.



9 ELEMENTS

1. Project proponent;
2. Proposed project;
3. Applicable federal license or permit;
4. Location, amount, and nature of discharges and the location of receiving waters;
5. Methods and means to monitor the discharge and equipment to be used;
6. List of all other authorizations required for the proposed project;
7. Documentation for prefiling meeting 30-days prior 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.'*



REASONABLE PERIOD OF TIME

- Reasonable Period of Time (within 15 days of receipt)

60 days = General Permits/Nationwide permits

90 days = Letters of Permission/Individual Permits

120 days = Corps-lead Environmental Impacts Statement



NEIGHBORING JURISDICTION

For Water Quality Certification decisions issued within a reasonable period of time:

- Notification to EPA of 401 authority decision to issue (within 5 days of receipt)
- EPA Neighboring Jurisdiction (30 days to conduct review)



NEIGHBORING JURISDICTION (NJ)

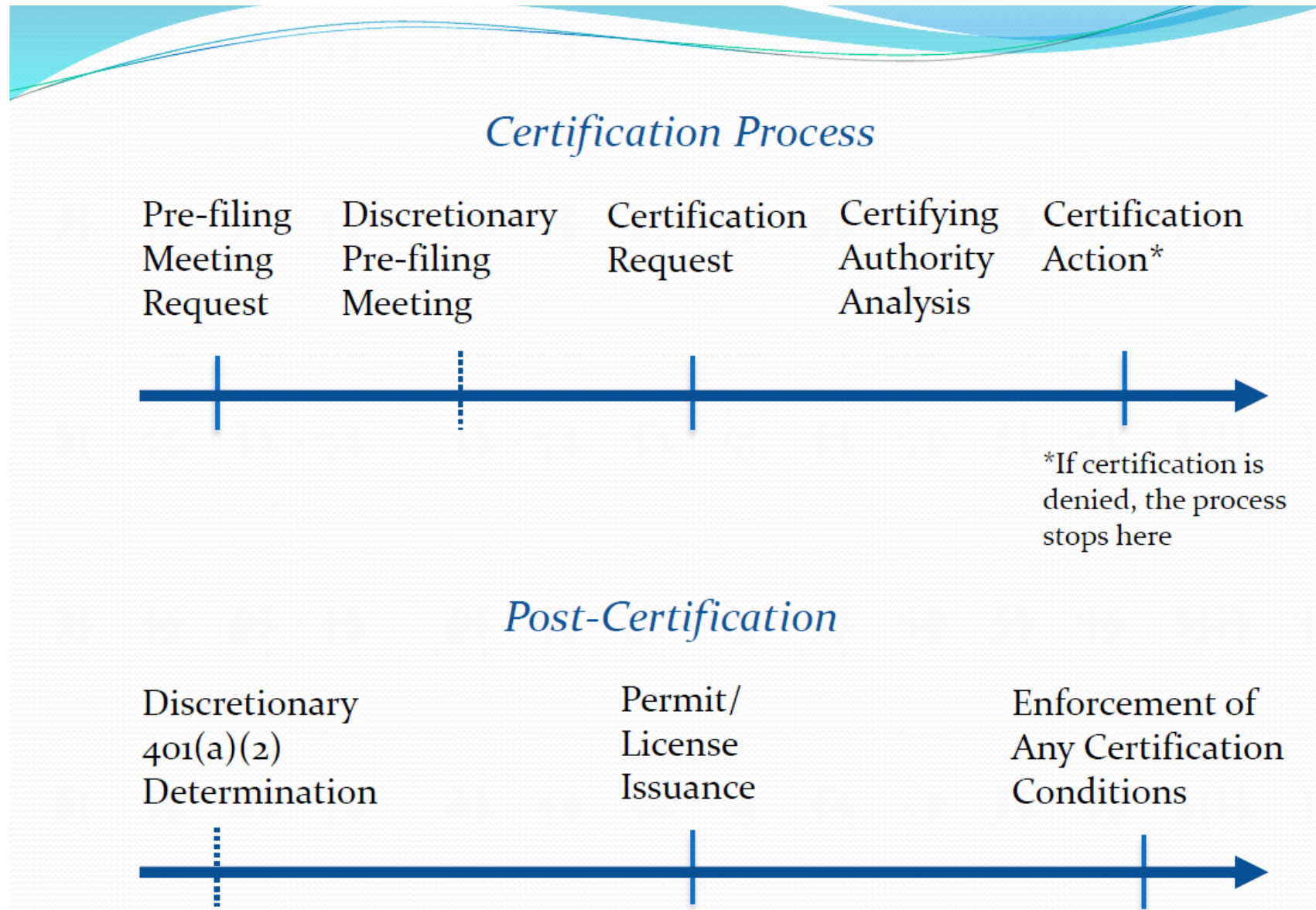
EPA review process:

- 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.

Neighboring Jurisdiction Process - Required for ALL individual 401 WQC actions, including non-notifying Nationwide Permits.



CERTIFICATION PROCESS





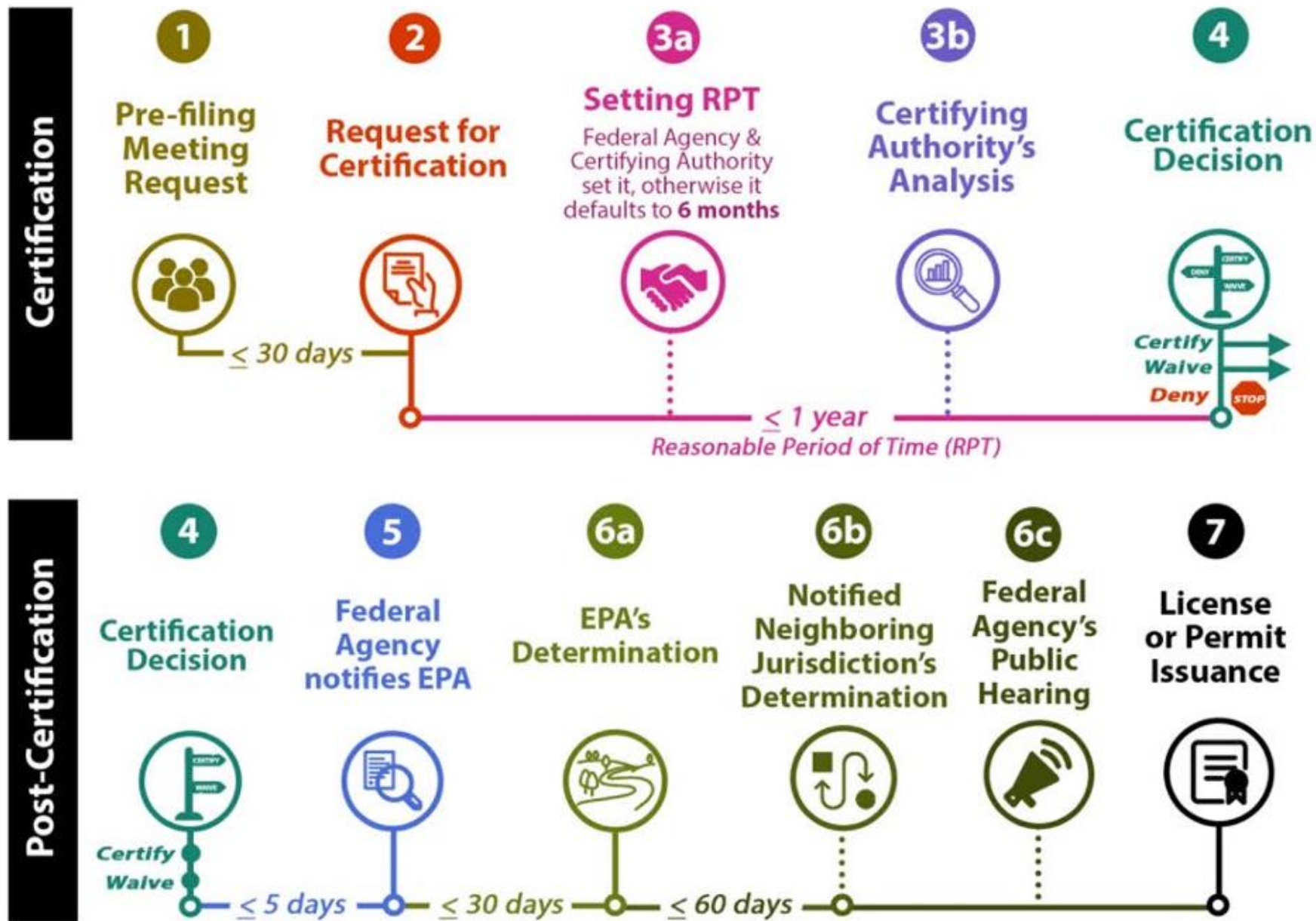
2023 SECTION 401 WQC IMPROVEMENT RULE

Major changes:

- Pre-filing Meeting: No longer requires a mandatory 30-day between pre-filing meeting and certification request if the CA waives or shortens this timeline.
- Request for Certification: No longer limits the CA from including additional contents in a request for certification.
- Setting RPOT: No longer relies solely on the federal agency. The RPOT can be jointly determined by the federal agencies and the CA. If no agreement, the default RPOT would be 6 months.
- RPOT Extensions: Federal agency can agree to extend the RPOT for major events and when the CA's public notice procedures require a longer RPOT, limited to one year.
- Public Notice and Analysis: No longer limited to the discharge. Can include construction and operation.
- Neighboring Jurisdiction: Process needed for both waived and issued WQC.
- WQC Modifications: CAs and federal agencies may agree to modify a grant of certification (with or without conditions).



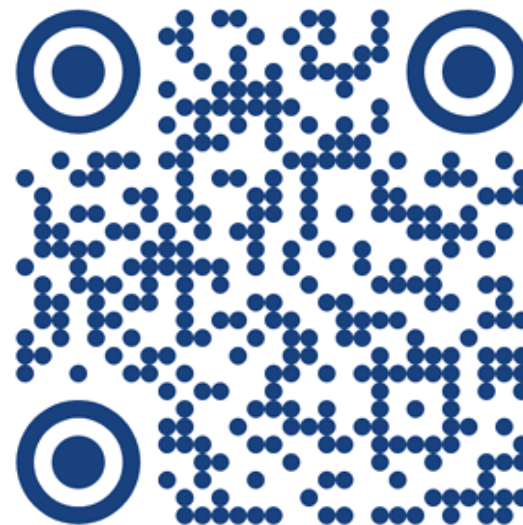
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Visit EPA CWA section 401 Website for
additional information at
<https://www.epa.gov/cwa-401>



QUESTIONS?



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