

Federal Regulatory Compliance for Requests for Individual Clean Water Act Section 401 Water Quality Certifications

In accordance with 40 C.F.R. section 121.5, project proponents seeking individual Clean Water Act section 401 water quality certifications to discharge dredged or fill material to waters of the U.S. must submit the following three items in addition to the information provided in their state application for a water quality certification. These items, which are listed below, and the state application must be submitted concurrently to both the Water Board and the Corps of Engineers.

1. Include documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
2. 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
3. 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.’*

Background:

Project proponents seeking individual Clean Water Act section 401 water quality certifications to discharge dredged or fill material to waters must comply with numerous statutes and regulations, including the [Porter-Cologne Water Quality Control Act](#)¹, the federal regulations set forth in the [2020 CWA Section 401 Certification Rule](#)² (also known as the “2020 401 Rule”; 40 CFR § 121 et seq.), the California Code of Regulations (CCR § 3830 et seq.) and the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Dredge or Fill Procedures). To ensure that applicants provide all of the information needed by these statutes and regulations, the Water Boards recommend that project proponents use the [state application for discharges of dredged or fill materials](#)³ to help ensure that they are submitting all the required information.

Separately, the 2020 401 Rule requires project proponents submit the following information concurrently to the appropriate Water Board and the Army Corps of Engineers (40 C.F.R. § 121.5 (b)). Of the nine items listed below, three are not included

¹ https://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf

² https://www.epa.gov/sites/default/files/2020-07/documents/clean_water_act_section_401_certification_rule.pdf

³ https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wqcapppword.docx

in the state application and must be submitted separately to satisfy federal regulations (bolded items 7-9 below, which are also listed at the beginning of this document).

“A certification request for an individual license or permit shall:

1. Identify the project proponent(s) and a point of contact;
2. Identify the proposed project;
3. Identify the applicable federal license or 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 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.’”**

Useful links:

- [Water Board Water Quality Certification Staff Directory](#)⁴
- [US EPA overview of the 2020 401 Rule](#)⁵
- [Memorandum of Understanding between the California State Water Resources Control Board, the Regional Water Quality Control Boards, and the Regulatory Divisions of the Los Angeles, Sacramento, and San Francisco Districts of the United States Army Corps of Engineers \(April 2023\)](#)⁶

⁴ h ps://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wqc_staffdir.pdf

⁵ h ps://www.epa.gov/cwa-401/2020-clean-water-act-section-401-cer-fica-on-rule-0

⁶ h ps://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/mou-usace.pdf