



Requests for § 401 Pre-Filing Meeting and § 401 Water Quality Certification

November 16, 2020

EPA Final Rule:

On June 1, 2020, the U.S. Environmental Protection Agency (EPA) finalized the “Clean Water Act Section 401 Certification Rule”¹ (“[Final Rule](#)”) which revised the § 401 Water Quality Certification (“certification” or “WQC”) regulations found in the Code of Federal Regulations (CFR), Title 40, Part 121 (40 CFR 121). The Final Rule became effective on September 11, 2020.

What the Final Rule requires regarding pre-filing meetings and § 401 WQC requests:

40 CFR 121.4 requires § 401 WQC applicants to request a pre-filing meeting with the certifying authority at least 30 days prior to submitting a § 401 WQC request.

For New Hampshire, the **certifying authority** is the New Hampshire Department of Environmental Services (NHDES).

40 CFR 121.5 includes requirements for submitting § 401 WQC requests. The § 401 WQC request must include a written, signed and dated communication that satisfies the requirements of 40 CFR 121.5(b) or (c). Sections 121.5(b) lists the submission requirements for § 401 WQC requests for individual federal licenses or permits and section 121.5(c) lists the information that must be included with § 401 WQC requests for a general federal license or permit. Details are included in the [Final Rule](#). Please note that NHDES may request additional information if it is needed to prepare the § 401 WQC.

Submission procedures for pre-filing meeting or § 401 WQC requests?

Requests for either a § 401 pre-filing meeting or for § 401 WQC should be sent by email to Gregg Comstock at william.g.comstock@des.nh.gov. Please include one of the following in the subject line of the request: “Request for 401 Pre-filing meeting” or “Request for 401 WQC”. When submitting the § 401 WQC request, a hard copy of the request including an original signature and date of submission should be mailed to:

NH Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302-0095
Attention: Gregg Comstock, P.E.
Watershed Management Bureau
401 Certification Program

IMPORTANT: When the § 401 WQC is submitted to NHDES, 40 CFR 121.5(a) requires applicants to **concurrently** submit their § 401 WQC request to the Federal agency to which they are applying for a license or permit that requires § 401 WQC. It is recommended that applicants contact the Federal agency in advance for their submission requirements.

¹ The Final Rule and preamble may be found in [Federal Register Vol 85, No. 134, July 13, 2020](#).

When does the “reasonable period of time” for NHDES to act on a § 401 WQC request begin?

The statutory reasonable period of time for NHDES to act on a § 401 WQC request (which varies by federal agency but can not exceed one year) begins on the date NHDES is in receipt of a § 401 WQC request that includes all of the information in either 40 CFR 121.5 (b) or (c). Receipt means the date a certification request is documented as received by a certifying authority in accordance with applicable submission procedures. Submission procedures for NHDES are described above. If an applicant does not submit a § 401 WQC request that includes all of the components in either 40 CFR 121.5 (b) or (c), then the reasonable period of time that NHDES has to act on the § 401 WQC request does not begin ².

Questions?

Should you have any questions, please contact:

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Watershed Management Bureau
Water Division, NH Department of Environmental Services
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Concord, NH 03302-0095
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603-271-2983

² Federal Register, Vol 85, No. 134, July 13, 2020, page 42246