



Clean Water Act Section 401

Focus on Water Quality Certification

Section 401 Water Quality Certification

Passed by Congress in 1972, the federal Clean Water Act grants states and Tribal governments the authority to approve, condition, or deny federally licensed projects, actions, and activities directly affecting waters within their jurisdictions. In Washington, Ecology is the certifying authority and is responsible for issuance of Section 401 water quality certifications. Tribal governments and the U.S. Environmental Protection Agency (EPA) also have this authority on Tribal and non-state lands.

Under Section 401 of the Clean Water Act, federal agencies cannot issue a license or permit before Ecology makes a determination on a water quality certification request or waives our right to review. Any conditions that the certifying agency sets then become conditions of the federal permit or license.

When is water quality certification required?

A water quality certification is required when the following requirements are met:

1. **Federal authorization is required.** Most commonly, this means the project needs a federal permit or license, such as a dredge and fill permit issued by the [U.S. Army Corps of Engineers](https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/)¹ (Corps) under Section 404 of the Clean Water Act, a [Federal Energy Regulatory Commissioner](https://www.ferc.gov/hydropower)² (FERC) hydropower license, or a National Pollutant Discharge Elimination System permit from EPA. Federal authorization also includes projects carried out by a federal agency.
2. **A potential for a discharge exists.** The project must have the potential to create a

discharge. This may be a discharge of pollutants, suspended sediments, dredge material, or other discharges including an increase or decrease in flow.

3. **The discharge is into “Waters of the United States”.** This includes navigable waters, territorial seas, tributaries to navigable waters, and adjacent wetlands.
4. **The discharge is from a point source.** The potential discharge must come from a point source, which simply means that it must be from a distinct and discernible source.

A project that meets all four of the requirements cannot move forward without a water quality certification. If the potential discharge originates in Washington, Ecology has the authority to approve, condition, deny, or waive a water quality certification. Once it is determined that a water quality certification is required, Ecology is not limited to addressing only the discharge into the Waters of the U.S. - Ecology may look at construction, operations, and maintenance of the project to protect the state's water quality.

What is the water quality certification process?

The EPA 401 Rule outlines the following requirements:

- **Before submitting a water quality certification request** applicants must request a pre-filing meeting with Ecology at least 30 days beforehand. We have developed a [pre-filing request form](#)³ to assist applicants.
- **At least 30 days after submitting a pre-filing meeting request**, applicants may then submit

¹ www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/

² www.ferc.gov/hydropower

³ apps.ecology.wa.gov/publications/SummaryPages/ECY070638.html

complete Section 401 request that includes a [401 Request Form](#),⁴ copy of the federal permit application, and supporting document, to Ecology.

Ecology's process

Applicants must submit their pre-filing meeting requests, Section 401 water quality certification requests, and any supporting documents to us electronically at ecyrefedpermits@ecy.wa.gov.

Once Ecology receives a request for water quality certification, we issue a public notice for the request, if a water quality certification is required.

How does Ecology coordinate during review?

Ecology's federal permit team coordinates with other Ecology programs (such as water quality) and other state and federal agencies that have regulatory authority over a particular project. This includes the Washington Departments of Natural Resources and Fish and Wildlife, and the U.S. Army Corps of Engineers (Corps).

Coordination ensures a common understanding of each project and its potential impacts, helps to identify concerns held by multiple agencies so that the project proponent can ensure that all regulatory concerns are addressed simultaneously, and results in efficient and effective permitting.

What are the potential outcomes of a water quality certification request?

Certify. When there is reasonable assurance that a project will comply with applicable water quality

standards, Ecology will certify the project. Most certifications include conditions within an Order that must be followed to ensure water quality standards are met.

Common conditions include: notification, compensatory mitigation for the loss of wetlands functions or values, restoration of streams, use of best management practices to prevent pollutant discharges, and monitoring of wetlands or waters with associated reporting. The project proponent must comply with the conditions in the certification Order, which are incorporated into the federal permit or license.

Deny. Ecology may deny a certification, in which case the federal agency cannot issue the related permit. A denial may mean that Ecology believes that the project is unlikely to comply with water quality standards, or that there is not enough information to certify the project. The most common reason for a denial is an incomplete state environmental policy act review. Ecology cannot issue a 401 water quality certification before completion of this environmental review.

Waive. A waiver means that the state did not act on a request for water quality certification. Under the Clean Water Act, the federal agency can assume that Ecology waived review if we do not act within the time allowed.

Related Information

- Learn more at ecology.wa.gov/401.



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To request an ADA accommodation, contact Ecology by phone at 360-407-6600 or email at mjor461@ecy.wa.gov, or visit <https://ecology.wa.gov/accessibility>. For Relay Service or TTY call 711 or 877-833-6341.

⁴apps.ecology.wa.gov/publications/SummaryPages/ECY070640.html