



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
100 W. OGLETHORPE AVENUE  
SAVANNAH, GEORGIA 31401-3604

November 10, 2020

Regulatory Division

**DISTRICT PUBLIC NOTICE**

**THE CLEAN WATER ACT SECTION 401 CERTIFICATION RULE**

This public notice is provided to inform stakeholders and prospective applicants for U.S. Army Corps of Engineers (Corps), Savannah District permits under Section 404 of the Clean Water Act (CWA) of new procedural requirements established by the U.S. Environmental Protection Agency's (EPA) newly promulgated regulation implementing Section 401 of the Federal Clean Water Act (CWA).

Effective September 11, 2020, the "CWA Section 401 Certification Rule" (85 Fed. Reg. 42,210 (July 13, 2020)) was implemented nationwide. The Rule (to be codified at 40 C.F.R. Part 121) establishes procedures that promote consistent implementation of CWA Section 401 and regulatory certainty in the federal permitting process. Section 401 of the CWA provides states and authorized tribes with an important tool to help protect the water quality of federally regulated waters within their borders, in collaboration with federal agencies. Section 401 of the CWA requires that, for any federally licensed or permitted project that may result in a discharge into waters of the United States, a water quality certification be issued to ensure that the discharge complies with applicable water quality requirements. The Rule addresses some key areas of the CWA Section 401 certification process, including timelines for review and action, the scope of certification review, and early engagement (pre-filing meetings). More information on the Rule is available at the following website: <https://www.epa.gov/CWA-401>.

**IMPORTANT CONSIDERATIONS FOR PROJECT PROPONENTS**

- a. Within the boundaries for the Savannah District, Regulatory Division (RD), the certifying authority for Section 401 water quality certification (WQC) is the Environmental Protection Division of the Georgia Department of Natural Resources (GAEPD). **Before submitting a request for an individual 401 WQC to the GAEPD, a project proponent must request a pre-filing meeting with the GAEPD at least 30 days prior to submitting the WQC request.** The certifying authority will determine if the meeting will be held, but submittal of the request for a meeting is required. RD anticipates that GAEPD will be providing additional information regarding their Section 401 WQC process and requirements
- b. Applicants must concurrently submit their requests for WQC to both the certifying authority (GAEPD) and RD. Applicants are encouraged to copy RD on WQC requests submitted to a certifying authority for a project within RD's area of responsibility via

email in accordance with the application submittal instructions included on the Savannah District RD website:

<https://www.sas.usace.army.mil/Missions/Regulatory/Electronic-Submittal-of-Applications/>

c. The Rule defines what a “request for 401 certification” entails. The Rule specifies that a request must contain the following information:

- (1) The project proponent(s) and a point of contact;
- (2) the proposed project;
- (3) the applicable federal license or permit;
- (4) the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
- (5) a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge;
- (6) 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) documentation that a pre-filing meeting request was submitted to the certifying authority (State/Tribes) at least 30 days prior to submitting the certification request;
- (8) a certification statement as follows: “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) a statement as follows: “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”.

### **WQC REQUEST TIMEFRAMES**

The Rule requires that action on a WQC request must be taken by the certifying authority within a reasonable period of time, but in no case later than one year after receipt of a certification request. RD will establish the reasonable period of time on either a categorical or case-by-case basis, and according to criteria prescribed by the Rule. The criteria used to establish the reasonable period of time are: (1) the complexity of the proposed project; (2) the nature of any potential discharge; and (3) the potential need for additional study or evaluation of water quality effects from the discharge. RD will work with GAEPD in our area of responsibility to establish a reasonable period of time on a categorical basis for projects that do not require complex evaluations or additional study/evaluation.

Upon receipt of a request for WQC, RD will provide the following information to GAEPD within 15 days: (1) the date of receipt; (2) the applicable reasonable period of time to act on the certification request; and (3) the date upon which waiver will occur if GAEPD fails or refuses to act on the certification request. Once GAEPD has received RD’s notice of the reasonable period of time, it may make a written request for extension, if necessary. If RD agrees to extend the reasonable period of time, GAEPD

and project proponent shall be notified in writing. However, the reasonable period of time may not exceed one year.

### **POST-CERTIFICATION PROCESS - DETERMINATION OF EFFECT ON NEIGHBORING JURISDICTIONS**

In accordance with Section 121.12 of the Rule, within 5 days of the issuance of the individual WQC, and prior to the issuance of the Corps permit, the Corps shall notify the U.S Environmental Protection Agency (EPA). Within 30 days after receiving this notification, the EPA may determine that the discharge from the certified project may affect water quality in a neighboring jurisdiction. If the EPA determines that the discharge from the certified project may affect water quality in a neighboring jurisdiction, the EPA will notify the neighboring jurisdiction, the certifying authority, the Corps, and the project proponent within that 30-day period. This neighboring jurisdiction will then have 60 days to notify the EPA and Corps whether it has determined that the discharge will violate any of its water quality requirements, to object to the issuance of the permit, and to request a public hearing.

Attached to this Public Notice is a flow chart outlining the general process and timing of the WQC issuance, but it is not all-encompassing as certain scenarios may alter timeframes and trigger additional procedural requirements.

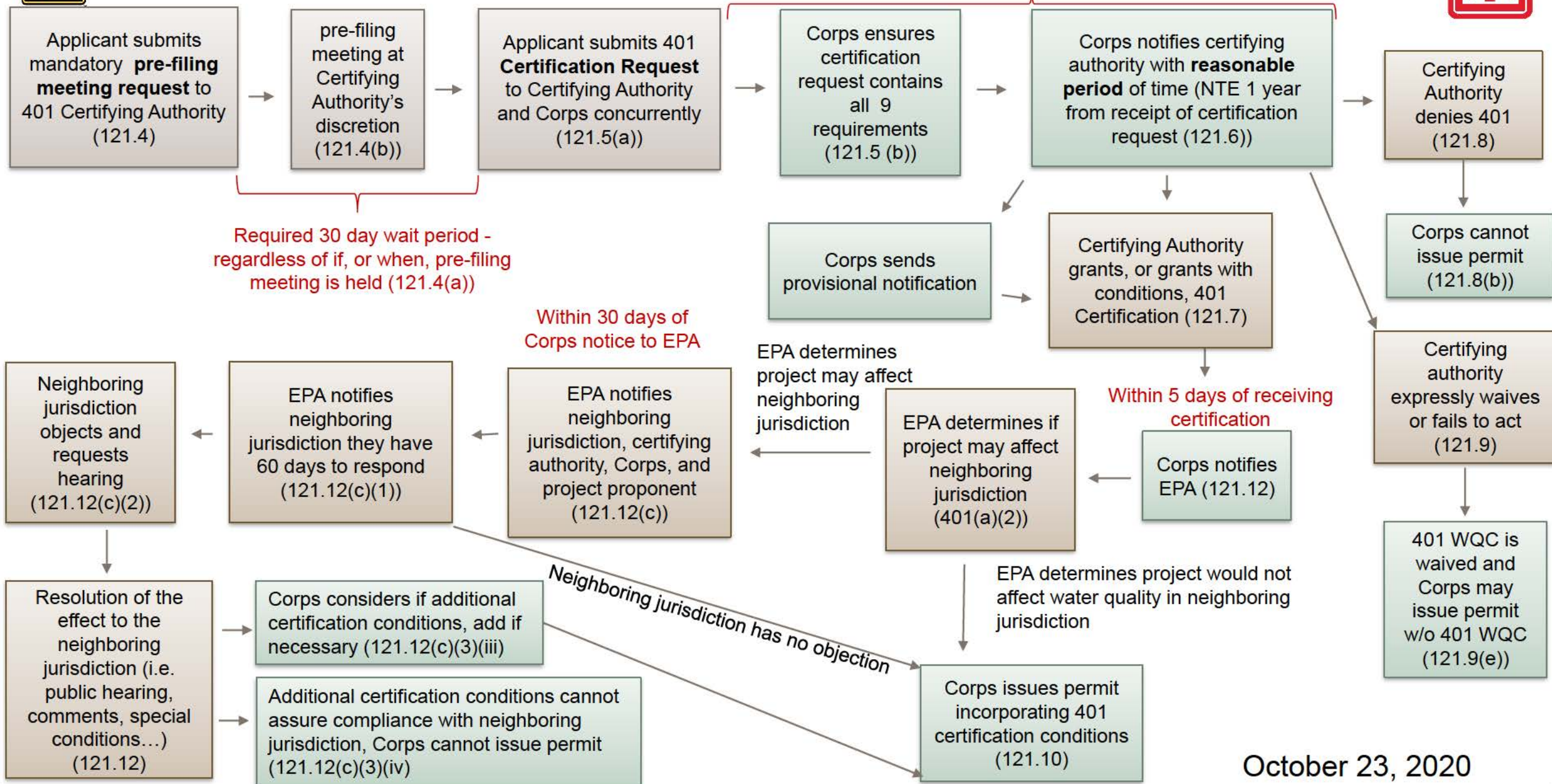
The procedures outlined in this public notice are for the Savannah District, Regulatory Division only. If also submitting paperwork for a neighboring District's Regulatory Division, please contact that District first to determine their requirements. This procedure is effective as of September 11, 2020. If you have any questions regarding this public notice, please contact Adam F. White, Lead Biologist, Regulatory Division, Piedmont Branch via email at [adam.f.white@usace.army.mil](mailto:adam.f.white@usace.army.mil).

Enclosure



# 401 process and timeline

Within 15 days of receipt of certification request



Required 30 day wait period - regardless of if, or when, pre-filing meeting is held (121.4(a))

Within 30 days of Corps notice to EPA

Within 5 days of receiving certification

October 23, 2020