



PUBLIC NOTICE

U.S. Army Corps
of Engineers

Buffalo District
1776 Niagara Street
Buffalo, NY 14207
Attn: Regulatory Branch

New York District
Jacob K. Javits Federal Building
New York, NY 10278-0090
Attn: Regulatory Branch

NOTICE ANNOUNCING THE CLEAN WATER ACT SECTION 401 CERTIFICATION RULE

Effective September 11, 2020, the “Clean Water Act (CWA) Section 401 Certification Rule” (Rule, 85 Federal Register 42,210 [July 13, 2020]) became effective nationwide. The Rule (40 CFR Part 121) establishes procedures that promote consistent implementation of the 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 of dredged or fill material into waters of the United States, a water quality certification (WQC) be issued to ensure that the discharge complies with applicable water quality requirements. The Rule addresses some key areas of the CWA Section 401 WQC process, including timelines for review and action, the scope of the WQC review, and early engagement (pre-filing meetings). More information on the Rule is available at the following website: <https://www.epa.gov/CWA-401>

1. Important Considerations for Project Proponents:

- a. Before submitting a request for an individual Section 401 WQC to the certifying authority (i.e. state, tribe or USEPA), in accordance with the new rule, a project proponent must request a pre-filing meeting with the certifying authority at least 30 days prior to submitting the Section 401 WQC request. The certifying authority will determine if the meeting will be held, but submittal of the request for a meeting is required.

Note: Projects qualifying for a general Section 401 WQC are not required to request a pre-filing meeting. The certifying authority is the appropriate entity to determine the type of Section 401 WQC required for a specific project. In New York State, the US Environmental Protection Agency Region 2 (Region2_CWA401@epa.gov) is the designated certifying authority for

projects occurring within tribal lands, except for the Saint Regis Mohawk Tribe as they have been designated as the certifying authority for their tribal lands. For projects occurring outside tribal lands, please contact the New York State Department of Environmental Conservation (NYSDEC) to determine the appropriate state agency with the certifying authority for your project. See Enclosure 1 to determine appropriate US Army Corps of Engineers District and NYSDEC Region.

Information regarding the Section 401 WQC process and requirements within the Buffalo District's and New York District's Regulatory Program area of responsibility (AOR) can be found at the following website:

<https://www.lrb.usace.army.mil/Missions/Regulatory/>

<https://www.nan.usace.army.mil/Missions/Regulatory/>

b. Applicants must submit their requests for Section 401 WQC to the state and their Department of the Army (DA) permit application or pre-construction notification and a copy of the Section 401 WQC request concurrently to the appropriate Regulatory Branch (RB), Buffalo District or New York District. Applicants are encouraged to submit copies to RB electronically in accordance with the process outlined in Section 2 below.

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

- i. The project proponent(s) and a point of contact;
- ii. a description of the proposed project;
- iii. the applicable federal license or permit;
- iv. the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
- v. 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;
- vi. 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;
- vii. documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
- viii. 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
- ix. a statement as follows: "The project proponent hereby requests that the certifying authority review and take action on this CWA Section 401 certification request within the applicable reasonable period of time."

The New York State Department of Environmental Conservation (NYSDEC) has provided a Pre-Filing Meeting Request (PFMR) Form and a Supplemental WQC Form, and both are located at:

<https://www.dec.ny.gov/permits/6222.html>

2. **Submittal Process:** RB has developed the following procedure for electronic submission of DA permit applications, pre-construction notifications and copies of associated Section 401 WQC requests:

a. All documents should be saved as a PDF document, and then submitted as an attachment in an email to the following email addresses:

Buffalo District submittals: LRB.NewYork.RegActions@usace.army.mil

New York District submittals: CENAN-R-Permit-App@usace.army.mil

b. For tracking and processing purposes, it is helpful if the email includes the following:

- i. Email Subject Line: include the name of the applicant, type of DA permit request, and location (County and State). Example: RE: Doe, John, DA Permit Application (or Pre-Construction Notification) and Section 401 WQC Request, Erie County, New York;
- ii. Email Body: 1) Brief description of the proposed project, 2) contact information (phone number, mailing address, and email address) for the applicant and/or their agent, and 3) the project location: Address and Latitude/Longitude in decimal degrees (e.g. 42.92788°, - 88.36257°).

Note: More information about the Corps' Regulatory Program, including a fillable copy of the permit application form, is available at the websites noted in 1(a) above.

c. All forms that require signature must be digitally signed or signed manually, scanned and then sent electronically.

d. Electronic documents must have sufficient resolution to show project details. In order to have the highest quality documents, the original digital documents should be converted to PDF rather than providing scanned copies of original documents.

e. The permit application and documents submitted electronically must not exceed 10 megabytes (10MB) per email.

Note: Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.

Note: If you do not have internet access, information may be submitted through the U.S. Postal Service (USPS) to the following address:

United States Army Corps of Engineers
ATTN: CELRB-R
1776 Niagara Street
Buffalo, NY 14207

US Army Corps of Engineers, NY District
Attn: Regulatory Branch, Room 16-406
26 Federal Plaza
New York, NY 10278-0090

Submittals should only be provided through the USPS when electronic transmission is not possible. Precautionary internal mail handling procedures may be instituted to protect our workforce, which may result in longer than normal times to process and receive hard copy submissions.

3. **WQC Request Timeframes**: The Rule requires that action on a Section 401 WQC request must be taken by the certifying authority (i.e. state, tribe or USEPA) within a reasonable period of time, but in no case later than one (1) year after receipt of a certification request. The Buffalo District and New York District, RB will establish the reasonable period of time on either a categorical or case-by-case basis, 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. RB will work with each state in our AOR to establish a reasonable period of time on a categorical basis for projects that do not require complex evaluations or additional study/evaluation.

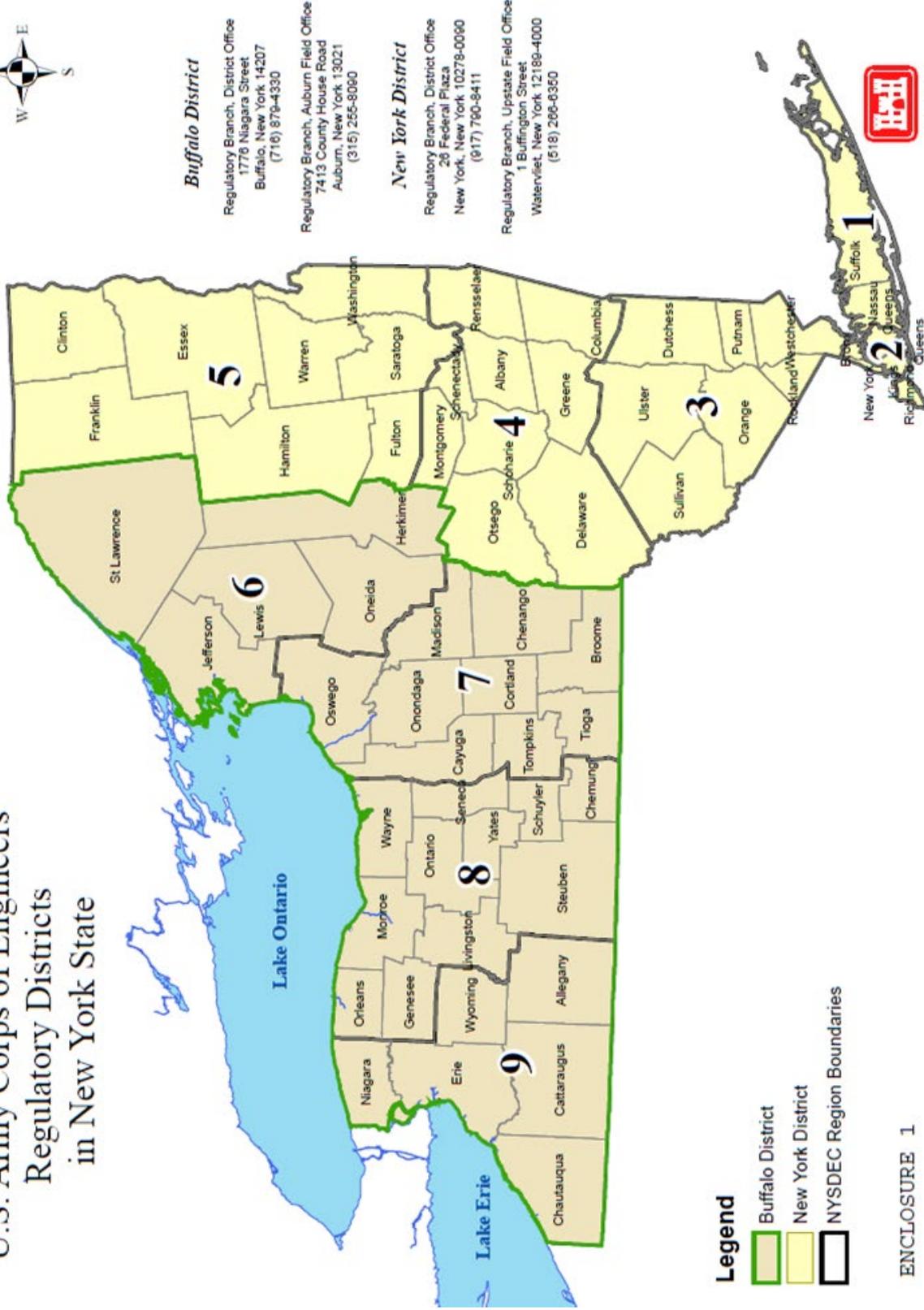
Upon receipt of a request for Section 401 WQC, the RB will provide the following information to the certifying authority (state) within 15 days: (1) the date of receipt; (2) the applicable reasonable period of time to act on the certification request; and (3) the date upon which waiver will occur if the certifying authority fails or refuses to act on the certification request. Once the state has received RB's notice of the reasonable period of time, it may make a written request for extension, if necessary. If RB agrees to extend the reasonable period of time, the state and project proponent shall be notified in writing. However, the reasonable period of time may not exceed one (1) year.

The procedures outlined in this Public Notice are for work occurring within New York State only. If submitting paperwork for another District's Regulatory Office, please contact the receiving district to discuss their requirements. If you have any questions, please contact Bridget Brown, Buffalo District via email at Bridget.Brown@usace.army.mil, or Brad Sherwood, New York District at Brad.Sherwood@usace.army.mil.



Stephan A. Ryba
Chief, Regulatory Branch
New York District

U.S. Army Corps of Engineers Regulatory Districts in New York State



Buffalo District

Regulatory Branch, District Office
1778 Niagara Street
Buffalo, New York 14207
(716) 879-4330

Regulatory Branch, Auburn Field Office
7413 County House Road
Auburn, New York 13021
(315) 255-8000

New York District

Regulatory Branch, District Office
28 Federal Plaza
New York, New York 10278-0060
(917) 760-8411

Regulatory Branch, Upstate Field Office
1 Buffington Street
Watervliet, New York 12189-4000
(518) 268-6350

Legend

- Buffalo District
- New York District
- NYSDEC Region Boundaries



U.S. Army
Corps of Engineers

ENCLOSURE 1