

## **PUBLIC NOTICE**

**CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69A HAGOOD AVENUE  
CHARLESTON, SOUTH CAROLINA 29403**

REGULATORY DIVISION

Refer to: 401 Water Quality Certification

FEBRUARY 3, 2021

### **NOTICE ANNOUNCING THE CLEAN WATER ACT SECTION 401 CERTIFICATION RULE**

Effective September 11, 2020, the “Clean Water Act (CWA) Section 401 Certification Rule” (85 Fed. Reg. 42,210 (July 13, 2020)) was implemented nationwide. The Rule (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:**

**STEP 1: Pre-Filing Meeting Request:** (Required for Standard Permits (IP) or General Permits (Nationwide Permits/Regional General Permits) where a General Water Quality Certification has been denied).

In accordance with the Rule, prior to submitting a request for an individual 401 water quality certification (WQC) to the certifying authority South Carolina Department of Health and Environmental Control, Bureau of Water (SCDHEC-BOW), a project proponent (applicant) MUST request a pre-filing meeting with the certifying authority at least 30 days prior to submitting the WQC request (application). The certifying authority will determine if the meeting will be held, but submittal of the request for a meeting is required. Pre-filing meeting requests should be submitted to the following address: [WQCWetlands@dhec.sc.gov](mailto:WQCWetlands@dhec.sc.gov).

SCDHEC- BOW is the appropriate entity to determine the type of WQC required for a specific project. Information regarding the WQC process and requirements for South Carolina can be found at the following website: <https://scdhec.gov/bureau-water/water-quality-certification-program-section-401-overview>

Projects qualifying for a general WQC are not required to request a pre-filing meeting.

**NOTE:** Marinas and expansion of existing marinas in shellfish harvesting waters shall require a 401 Water Quality Certification. This also includes docking structures, including community and commercial docks, that meet the definition of a marina. A marina is defined as:

- 1) locked harbor facility;
- 2) any facility which provides fueling, pump-out, maintenance or repair services (regardless of length);
- 3) any facility which has effective docking space of greater than 250 linear feet or provides moorage for more than 10 boats;
- 4) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats, such as a mooring field; or
- 5) a dry stack facility.

### **Step 2: WQC Certification Request**

- A. Applicants must submit their requests for WQC to the certifying authority (SCDHEC-BOW) and to the Charleston District, Regulatory Division (RD) concurrently. Applicants must copy RD on WQC requests submitted to SCDHEC-BOW for a project within RD's area of responsibility via email in accordance with the process outlined in Step 3 below.
- B. The Federal Regulation defines what a "request for 401 certification" entails. It 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 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".

C. In addition to Federal regulatory requirements listed in (B) above, SCDHEC Regulation 61-101, *Water Quality Certification* and Regulation 61-30, *Environmental Protection Fees* have requirements that must be met before WQC requests can be accepted as complete including the following:

- 1) The name, address, phone numbers, principal place of business of the applicant and, if applicable, the name and address of the agent for the applicant.
- 2) A complete description of the proposed permitted activity, including the location, affected waterbody(s), purpose, and intent of the project; maps, drawings, and plans sufficient for review purposes (detailed engineering plans are not required).
- 3) A description of all proposed activities reasonably associated with the proposed permitted project either directly or indirectly, including planned or proposed future development that relate to water quality considerations.
- 4) A description of the composition, source, and quantity of any material to be dredged or used as fill and a description of the area to be impacted, including the area of fill in acres.
- 5) The method of dredging or filling and specific plans for disposal and control of dredge spoils.
- 6) The names and addresses of adjacent property owners.
- 7) An application fee. Note that in accordance with DHEC regulations, application fees are due when the application is submitted and processing will not occurred until the fee is received.
- 8) Water quality monitoring data, water quality modeling results, or other environmental assessment may be required in accordance with Regulation 61-101, C.3. prior to accepting or processing the certification.

**Step 3. RD Application/ SCDHEC-BOW WQC Submittal Procedures:**

(Applications can be submitted no sooner than 30 days after the pre-filing meeting request.)

The Charleston District Regulatory Division has developed the following procedure for the public to submit Department of the Army (DA) Permit Applications. To submit DA Permit Application requests electronically, all documents should be saved as a PDF document, and then submitted as an attachment in an email to the corresponding email address of the Corps Regulatory Field Office in your area. A list of Field Offices and e-mail addresses can be found at: <https://www.sac.usace.army.mil/Media/Images/igphoto/2002482125/>

More information about the Corps' Regulatory Program, including a fillable copy of the DA Permit Application Form, is available at the following website:

<https://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>

WQC requests should be submitted to the following address: [WQCWetlands@dhec.sc.gov](mailto:WQCWetlands@dhec.sc.gov)

Information about the WQC process and requirements for South Carolina can be found at the following website: <https://scdhec.gov/bureau-water/water-quality-certification-program-section-401-overview>

#### **Step 4. WQC Request Timeframes:**

- A. The Rule requires that action on a WQC request must be taken by the certifying authority (state) within a reasonable period of time, but in no case later than one year after receipt of a certification request. The Charleston District Regulatory Division (RD) 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. RD will work with the state 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.
- B. Once a complete WQC request is received, RD will provide the following information to the certifying authority 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 a waiver will occur if the certifying authority fails or refuses to act on the certification request. Once the certifying authority 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, the certifying authority and project proponent shall be notified in writing. However, the reasonable period of time may not exceed one year.

The procedures outlined in this public notice are for the Charleston District Regulatory Division only. If submitting paperwork for another District's Regulatory Division, please contact them first to determine their requirements. This procedure is effective immediately. If you have any questions, please contact your local Regulatory Field Office.

#### **Coastal Zone Process**

Projects located within the coastal zone<sup>1</sup> of South Carolina requiring authorization from Department of the Army will also require a Coastal Zone Consistency (CZC) certification review conducted by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (OCRM). Additionally, a direct Critical Area Permit (CAP) will be required by OCRM for any project that would have direct critical area<sup>2</sup> impacts.

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<sup>1</sup> The coastal zone for South Carolina is comprised of eight counties. Horry, Georgetown, Charleston, Berkeley, Dorchester, Colleton, Beaufort, and Jasper.

<sup>2</sup> Critical areas, as defined 48-39-10, R.30-1(D) and R.30-10, are coastal waters, tidelands, beach/dune systems, and beaches.

The associated 401 and CZC will be incorporated into the direct critical area permit<sup>3</sup> (e.g. Individual permits or General permits).

**OCRM Application Request:**

The CZC submission provided to OCRM for review should be made concurrently with applications to the Charleston District per [15 CFR §930.58](#) and should include the following information:

- (1) A copy of the Joint Federal and State Application form
  - a. Including all material relevant to a State's management program provided to the Federal agency in support of the application; and
  - b. To the extent not included in paragraphs above, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;
- (2) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the South Carolina Coastal Zone Management Program (CZMP). Applicants must demonstrate that the activity will be consistent with the enforceable policies of the CZMP. Applicants must demonstrate adequate consideration of policies which are in the nature of recommendations.
- (3) Additional necessary data and information from the CZMP includes completed State or local government permit applications which are required for the proposed activity but does not include the issued State or local permits.
- (4) Requests that triggers an Individual Critical Area Permit by OCRM, in addition to the above information, must also include the following:
  - a. Affidavit of Ownership or Control form (page 9 of OCRM Critical Area Permitting Application) completed, signed and notarized, including the following:
    - i. Certified plat of the property
    - ii. A certified copy of the deed, lease, easement, or other instrument under which the applicant claims title, or permission from the owner of the property to carry out the proposed activity.

\*Please note that professional dock drawings do not satisfy the proof of ownership requirement.
  - b. Professionally signed and sealed computer-generated drawings of the proposed project. All drawings submitted, as required with any application/amendment request for CAP review, must be produced, stamped and signed by one of the following professional groups: registered land surveyors, registered professional

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<sup>3</sup> Critical Area Permitting Regulations, as amended, R.30-2(H) states that the Department will not issue a separate 401 water quality certification and that the Critical Area Permit shall serve as the 401 water quality certification for an associated Federal permit.

engineers, registered landscape architects. These individuals must be licensed in the state of South Carolina. OCRM will not accept hand drawings or other drawings not meeting these criteria. Applications with drawings judged to be inexact and unprofessional will not be placed on public notice and will be returned to the applicant.

- c. A certified critical area line must be shown on all drawings for applications involving erosion control structures or a docking structure whose total channelward extension exceeds 900'. Additional information (newspaper ad public notice, revised project information, etc.) may be deemed necessary following the submission of the project request to OCRM.

**NOTE:** Marinas and expansion of existing marinas in shellfish harvesting waters within the Coastal Zone shall require a 401 Water Quality Certification. The definition of a marina has been previously defined in this document. The 401-water quality certification will be incorporated into the Critical Area Permit and associated Coastal Zone Consistency Certification.

**OCRM CAP & CZC Request Submittal Process:**

DHEC OCRM preference for submission of applications via DHEC's ePermitting system  
<https://epermweb.dhec.sc.gov/ncore/external/home>

System guidance information can be found at:  
<https://scdhec.gov/ePermitting/training>

More information about the OCRM Critical Area Permitting process, including a fillable copy of the Critical Area Permit application is available at the following website:  
<https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/coastal-permits/critical-1>

More information about the OCRM Coastal Zone Consistency process can be found at the following website:  
<https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/coastal-permits/coastal-zone>