

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers who serve as co-regulators of the federal Clean Water Act (CWA). The U.S. Environmental Protection Agency (EPA) has announced that it is in the process of determining whether guidance or rulemaking may be necessary to address identified areas of regulatory uncertainty or implementation challenges regarding the scope of state water quality certification under CWA Section 401.

To better understand what aspects of Section 401 can be improved to more effectively and efficiently protect the nation's waters, ACWA has gathered information from state clean water regulators regarding their experiences in the Section 401 water quality certification process. Responses were received from officials from 24 states, largely demonstrating that: (i) CWA Section 401 certification denials are minimal; (ii) delays in certification – while rare – are largely due to applicants' submittal on incomplete applications or other federal statutory requirements (e.g., National Environmental Policy Act, Endangered Species Act), rather than state certification processes; and (iii) that states have taken a variety of steps to promote timely, transparent, and scientifically-supported water quality certification determinations.

The following is a summary of state responses to 12 questions covering a broad spectrum of issues relating to CWA Section 401 state certification processes:

What is the average length of time it takes to complete a Clean Water Act Section 401 water quality certification (“certification”) once you have received a completed application?

State responses averaged **77 days** for certification completion. Responses varied from **14 days to 180 days**.

Approximately how many certification requests does your state review each year? How many are denied?

State responses varied greatly as to the number of certifications processed annually. However, the number of denials of certifications reported was notably low. **A majority of responding states (13) reported no certification denials.** 17 states indicated 0-2 certification denials. No state reported a certification denial rate higher than 3.5%.

What steps has your state taken to make timely certification decisions?

States reported using a mix of front-loading, standardization, automation, interagency coordination, and targeted staffing to reduce back-and-forth and shorten review times. Steps described included:

- **Pre-filing / early engagement**
 - Detailed pre-filing meetings with applicants (and the Corps) to resolve issues before formal submittal; some states prepare drafts by the end of the public comment period.
 - Frequent, transparent communication with applicants throughout review.

- **Clear guidance and application improvements**
 - Revised application forms and instructional materials (many updated after the 2023 federal rule) so requests are complete on first submission.
 - Publicly posted process descriptions, templates, and example applications (via FOIA or website) so applicants know expectations.
- **Standardization & templates**
 - Standardized data requirements (e.g., sediment characterization), standardized conditions, and use of templates/decision documents to speed application and review.
 - Categorical/programmatic certifications and condensed permit conditions placed in state regulations to reduce need for individual decisions.
- **Regulatory/administrative changes**
 - Regulatory updates to streamline certification of nationwide/general permits (avoiding lengthy state rulemaking) and to embed common conditions in regulation.
 - Use of programmatic reasonable periods (many states typically reported ~90 days rather than defaulting to six months).
- **Electronic processing & web tools**
 - Online submission portals that validate fields, allow e-signatures, track workflow, and send automated reviewer notifications.
 - Acceptance of electronic information and correspondence to speed exchange.
- **Interagency coordination**
 - MOUs and formal coordination with USACE to align pre-filing, timelines, concurrence steps, and programmatic certifications — saving time and resources.
- **Staffing, training & internal controls**
 - Dedicated staff or FTEs, hiring contractors to augment capacity, staff training, internal SOPs, and tracking of deadlines and metrics.
 - Internal performance expectations and tracking to keep reviews on schedule.
- **Expedited processes for emergencies**
 - Special/expedited public notice and processing procedures for disaster recovery and emergency projects.

States emphasized preventing incomplete submissions (clear guidance + pre-filing), reducing repetitive review work (standardized requirements, templates, programmatic certifications), speeding handling (electronic systems + staffing), and improving coordination with the Corps to achieve timelier certification decisions.

What factors does your state consider in determining whether a certification request is complete and acceptable? Do you have clear requirements outlining what constitutes a complete application?

Most states reported having clear, codified, or guidance-based requirements that define what makes a Section 401 application complete. Completeness determinations typically rely on federal requirements under 40 CFR §121.5, state regulations or administrative codes, and agency-developed forms, checklists, or guidance documents. The goal is to ensure that all necessary project details, water quality information, and supporting documentation are submitted at the outset to minimize delays. Common factors considered in determining an application's completeness included:

- **Compliance with Federal and State Regulatory Requirements**
 - Many states directly referenced 40 CFR §121.5(a)–(b) as the baseline for completeness.
 - Several also cited state statutes or administrative rules
 - Applications must align with both federal and state water quality standards.
- **Basic Administrative Requirements**
 - Completed and signed application form.
 - Payment of applicable fees.
 - Accurate contact information, project location, and maps.
 - Submission of the public notice (if applicable) and proof of publication.
- **Project Description and Technical Detail**
 - Clear and complete description of proposed activities and discharges.
 - Inclusion of plans, maps, site drawings, and photographs.
 - Quantification and characterization of impacts on waters, including wetland delineations, stream assessments, and mitigation proposals.
 - Explanation of avoidance and minimization measures.
- **Supporting Documentation**
 - Copy of the federal license or permit application (e.g., U.S. Army Corps 404 permit or FERC documents).
 - Documentation of agency coordination, including correspondence with USACE, USFWS, and state natural resource agencies.
 - Water quality-related data, sediment characterization, and/or use attainability analyses.
 - Mitigation plans with legal protection mechanisms (e.g., easements).
 - Applicable best management practices (BMPs).
- **Environmental and Regulatory Context**
 - Consistency with state water quality standards, management plans, and antidegradation policies.
 - Consideration of feasible alternatives, cumulative impacts, and threatened or endangered species.
 - Demonstrated compliance with state and federal stormwater management and nonpoint source requirements.
- **Agency-Specific or Activity-Based Requirements**

- Some states require specialized studies or forms depending on project type (e.g., wetland fills, stream modifications, hydropower relicensing).
- A few agencies tie completeness reviews to other permitting programs (e.g., wetlands or flood hazard applications) with synchronized timelines.

Most states have formalized, transparent, and federally aligned standards defining a “complete” 401 certification request. Completeness hinges on providing a full, accurate, and well-documented project description—including federal permit information, water quality data, and mitigation details—so that reviewers can assess compliance with water quality standards without extensive follow-up.

Do you have best practices, such as early consultation processes, types of materials needed, etc. for applicants to understand what constitutes a complete application? If so, please elaborate.

Nearly all respondents indicated that they have established formal or informal mechanisms to support applicants and improve application completeness. Common themes included the use of pre-filing meetings, detailed checklists or guidance documents, online submission tools that ensure completeness, and active interagency coordination.

- **Pre-Filing Consultation and Early Coordination:** A strong majority of states emphasized the importance of pre-filing or pre-application meetings to ensure applicants understand requirements before submission. Many states require or strongly encourage pre-filing meetings, often at least 30 days prior to submittal. These meetings allow agencies to discuss project details, clarify expectations, identify potential deficiencies, and tailor information requests.

Early coordination also provides opportunities for joint engagement with federal permitting agencies, such as the U.S. Army Corps of Engineers (USACE), and other state or local entities to align requirements and avoid duplication.

Some states (e.g., Nevada, Maryland, and California) noted that early consultation reduces incomplete applications and expedites review by identifying data gaps in advance.

- **Checklists, Forms, and Guidance Documents:** Many states use application checklists, standardized forms, or detailed guidance documents to outline the specific materials and information needed for a complete submission. Some states provide formal lists of required elements in regulation or via agency websites. Several states have project-specific or activity-specific checklists (e.g., for dredge and fill, linear projects, or stormwater-related activities).

Guidance documents often include examples or templates for required plans such as inadvertent return plans, groundwater protection plans, and stormwater pollution prevention plans. Some states have developed comprehensive, fillable forms that serve as both guidance and the official application vehicle. A few respondents (e.g., California, Arizona, and Nevada) have detailed online application portals that prevent submission until all required information fields are completed.

Across the board, states recognize that early and proactive communication is the most effective strategy to ensure complete and high-quality Section 401 certification applications. The combination of structured pre-filing meetings, clear written guidance, interactive online tools, and ongoing consultation has proven successful in minimizing delays and improving application quality.

If an application for certification is incomplete, what steps are taken as a remedy?

When a Section 401 certification application is found incomplete, nearly all states reported taking immediate corrective action by notifying the applicant in writing—most often through email or formal letters—detailing the deficiencies and requesting the missing information. States emphasized maintaining communication and providing clear direction to help applicants achieve a complete submission without restarting the process. Common steps states pointed to included:

- **Written Notification of Deficiencies**
 - The most common remedy is a formal notice of deficiency or incomplete letter that:
 - Lists the specific missing or insufficient items.
 - Explains what is required to correct them.
 - Provides instructions, guidance documents, or examples to assist the applicant.
- **Timely Communication**
 - Several agencies commit to sending notices within a defined timeframe (e.g., within 15 business days of receipt).
 - Follow-up notices may be sent at regular intervals (e.g., 35, 55, and 65 days) if deficiencies remain unresolved.
- **Direct Applicant Engagement**
 - Many states contact applicants directly via email or phone to discuss deficiencies and clarify expectations.
 - Some agencies conduct coordination meetings or consultations (often including the U.S. Army Corps of Engineers) to resolve complex issues.
- **Iterative Information Requests**
 - If initial corrections are incomplete, agencies continue to request additional information until the submission meets completeness standards.
 - This process is collaborative, not punitive—agencies rarely “deny” applications outright for incompleteness.
- **Administrative Handling**
 - In some cases, incomplete applications are formally rejected or returned as “administratively incomplete” (not denied) until all required materials are received.
 - Once deficiencies are corrected, the application can be re-entered into the review process.

- **Provision of Resources**
 - Some states direct applicants to reference materials (e.g., example applications available through FOIA or agency websites) to clarify expectations and improve future submissions.
- **Interagency Coordination**
 - A few states coordinate closely with USACE to ensure that the applicant's materials are consistent with the federal public notice process and related NPDES or stormwater requirements.

Across states, incomplete water quality certification applications are handled through a transparent, supportive, and iterative process. State agencies reported promptly identifying missing information, communicating clearly with applicants, and providing resources or coordination to ensure the application becomes complete - helping maintain efficiency and avoid formal denials or delays.

What types of studies or requests for more information are most often requested?

The most frequently requested additional information or studies for Section 401 certification concern site characterization, environmental impacts, mitigation, and compliance documentation. Applicants are most often asked to provide maps, plans, photos, and technical analyses that clarify potential effects on water quality, aquatic life, wetlands, and endangered species. Requests for more information generally fall into a few consistent categories:

- Project documentation and mapping
- Ecological and habitat studies,
- Engineering and hydrologic analyses
- Mitigation and restoration planning, and
- Administrative completeness and coordination materials.

What complicating factors may extend the time required to gather appropriate information?

States consistently reported that delays in receiving complete, accurate, or updated information from applicants are the primary factors extending review timelines for WQC applications. Other major causes include project complexity or changes, interagency coordination delays, seasonal or technical study requirements, and public comment responses. Overall, delays arise from both applicant-side issues (such as incomplete submittals or redesigns) and external coordination factors (such as federal permitting, environmental review documents, or seasonal field constraints).

The time required to gather appropriate information for Water Quality Certification is most often extended by:

- Slow or incomplete applicant responses,

- Evolving or complex project scopes, and
- Coordination dependencies with federal or state partners.

Additional complications—such as public comments, seasonal field conditions, and internal staffing or administrative limits—further lengthen review timelines. In short, timeliness and quality of applicant-provided information, combined with project complexity and interagency coordination, are the dominant factors influencing delays in the WQC process.

What are the top three reasons for a delay in issuing a certification?

States reported that the most frequent reasons for delay in issuing certifications are:

1. **Incomplete or inadequate applications** (including missing information or insufficient documentation).
2. **Slow or unresponsive applicants** (delayed responses to requests for information, or submission of incorrect materials).
3. **Interagency coordination and public process requirements** (e.g., waiting on U.S. Army Corps of Engineers (USACE), public comments, or environmental review documents).

Additional but less frequent reasons include project changes during review, complex or controversial projects, staffing and workload constraints, and applicant payment or administrative issues.

The most consistent sources of delay in issuing water quality certifications are incomplete applications and slow applicant responses. These are compounded by federal coordination requirements, public review processes, and staffing limitations. Timeliness depends on applicant preparedness, responsiveness, and interagency alignment—factors largely outside the immediate control of state 401 programs.

At what point or points in the review process may your state decide to deny with or without prejudice a certification request?

Most states reported that denial of a water quality certification is rare and typically occurs late in the review process—after a complete application has been received, technical review has been conducted, and public notice requirements have been satisfied. However, states distinguish between two main categories of denial:

1. **Denial without prejudice** – most often issued when an applicant fails to provide sufficient information or becomes nonresponsive, making it impossible to complete review within the reasonable period of time (RPOT) under the Clean Water Act.
2. **Denial with prejudice** – issued when the project as proposed cannot meet state water quality standards, even with potential modifications or conditions.

In general, respondents expressed a strong preference to work with applicants to resolve deficiencies and avoid outright denials whenever possible.

States may deny certification requests at multiple points, but in practice:

- Procedural denials (without prejudice) occur when information is incomplete or deadlines approach.
- Substantive denials (with prejudice) occur only after full review confirms noncompliance with water quality standards.

Most states emphasized **collaboration**, **flexibility**, and **avoidance of formal denials** - favoring withdrawal or resubmission - to ensure compliance and maintain cooperative relationships with applicants and federal partners.

Other than the CWA, what statutes, regulations, and/or related requirements factor into the certification timeline review timeline?

States widely reported that the timeline for Section 401 water quality certification review is shaped not only by the federal Clean Water Act, but also by a patchwork of state statutes, administrative codes, environmental regulations, and procedural requirements. These additional authorities typically fall into four broad categories:

- State water quality laws and implementing regulations
- Public notice, hearing, and administrative procedure requirements
- Environmental review and coordination mandates (e.g., NEPA, CEQA, state-level equivalents)
- Other programmatic requirements (wetlands, floodplain, coastal zone, endangered species, etc.)

Collectively, these overlapping requirements determine how quickly an application can be processed, when the clock starts, and whether additional consultation or comment periods are required, often extending overall review time. While the Clean Water Act provides the federal foundation for Section 401 certification, state-specific laws and administrative codes overwhelmingly determine the pace and sequencing of reviews. These include:

- Mandatory pre-filing and public notice periods,
- Integration with other state permitting and environmental review processes, and
- Distinct procedural and antidegradation requirements.

As a result, certification timelines vary widely by state—reflecting each state’s broader regulatory framework, environmental protection priorities, and administrative coordination requirements.

Please describe other challenges or hurdles that your state has faced in implementing the Section 401 water quality certification program under recent federal rules.

Most states acknowledge that the 2023 Section 401 rule improved clarity and restored flexibility compared to the 2020 version. However, they continue to face implementation challenges - particularly around coordination with federal agencies, inconsistent timelines, limited staffing, and the constantly shifting regulatory landscape. Persistent uncertainty over WOTUS definitions, RPOT determinations, and scope of state authority remain significant hurdles to smooth administration of the Section 401 certification program.