



National Association of Wetland Managers

# Clean Water Act §401 Certification – Implications for 2026 Nationwide Permits

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# Section 401 Water Quality Certification - Overview

Clean Water Act §401 provides:

No federal permit or license can be issued that may result in a discharge to waters of the United States from a point source

Unless

The state or authorized Tribe certifies the discharge will be consistent with standards and other water quality goals, or waives.

No 401 cert or waiver means no federal permit or license.

# What Does a Certifying Authority Determine?

Before issuing a certification, the certifying authority should conclude the permitted/licensed activity will be consistent with:

- Effluent limitations for conventional and non-conventional pollutants

- Water quality standards

- New source performance standards

- Toxic pollutant limitations, plus

- Any “appropriate” state/tribal requirement.



# What Can a Certifying Authority Do Under 401 Cert?

**Grant:** indicates activity consistent with standards and other provisions.

**Grant with Conditions:** indicates activity consistent with standards and other provisions only if listed conditions are met.

**Deny certification:** indicates activity not consistent with water quality standards and other goals.

**Waive:** Certification authority decides to not act on a 401 certification request.

# Certification Process for 2026 NWP Package

Cert of the NWPs will be under the 401 cert regs from 2023.

The “reasonable period of time” is six months, ending on December 18, 2025.

Corps says certification will be based on proposed NWPs, not final regulations.

Corps will consider presence of “reopener” conditions as a denial. Then every use of a NWP requires an activity-specific 401 cert from that certifying authority.