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September 18, 2020

TO: DEQ-DWR-Wetlands-Public Listserv

FROM: Paul Wojoski, 401 & Buffer Permitting Branch  
Amy Chapman, 401 & Buffer Transportation Permitting Branch

RE: New Federal 401 Water Quality Certification Rule, Effective September 11, 2020

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The purpose of this Public Notice is to notice procedural changes for submittal of 401 applications to the Division of Water Resources in order to comply with the revised [Federal Clean Water Act Section 401 Certification Rule](#). This notice is available electronically at <http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits/401-public-notices>.

**NEW PROCEDURES IN RESPONSE TO THE REVISED FEDERAL CLEAN WATER ACT SECTION 401 CERTIFICATION RULE EFFECTIVE SEPTEMBER 11, 2020**

On September 11, 2020, a new Federal Clean Water Act Section 401 Certification Rule became effective. This rule stipulates specific requirements for all 401 Certification applications submitted to Certifying Agencies. As a Certifying Agency, the Division of Water Resources must adhere to the stipulations of this federal rule. The final federal rule can be viewed at [https://www.epa.gov/sites/production/files/2020-07/documents/clean\\_water\\_act\\_section\\_401\\_certification\\_rule.pdf](https://www.epa.gov/sites/production/files/2020-07/documents/clean_water_act_section_401_certification_rule.pdf)

In accordance with 40 C.F.R. Section 121.4(a) "At least 30 days prior to submitting a certification request, the project proponent shall request a pre-filing meeting with the certifying agency". In accordance with 40 C.F.R. Section 121.5(b)(7) and (c)(5), all certification requests shall include documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please refer to the [Final Federal Rule](#) for more information.

The Division has developed an Online Submission Form: Pre-Filing Meeting Request for applicants to submit the required pre-filing meeting request. The form will provide confirmation receipt of submittal to the applicant.

Effective Immediately, all 401 applications received without documentation that a pre-filing meeting request was submitted at least 30 days prior will be returned as incomplete.

*Revised 12-07-20*



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