

# Treatment in a Similar Manner as a State (TAS) Opportunities through the 2023 CWA Section 401 Rule

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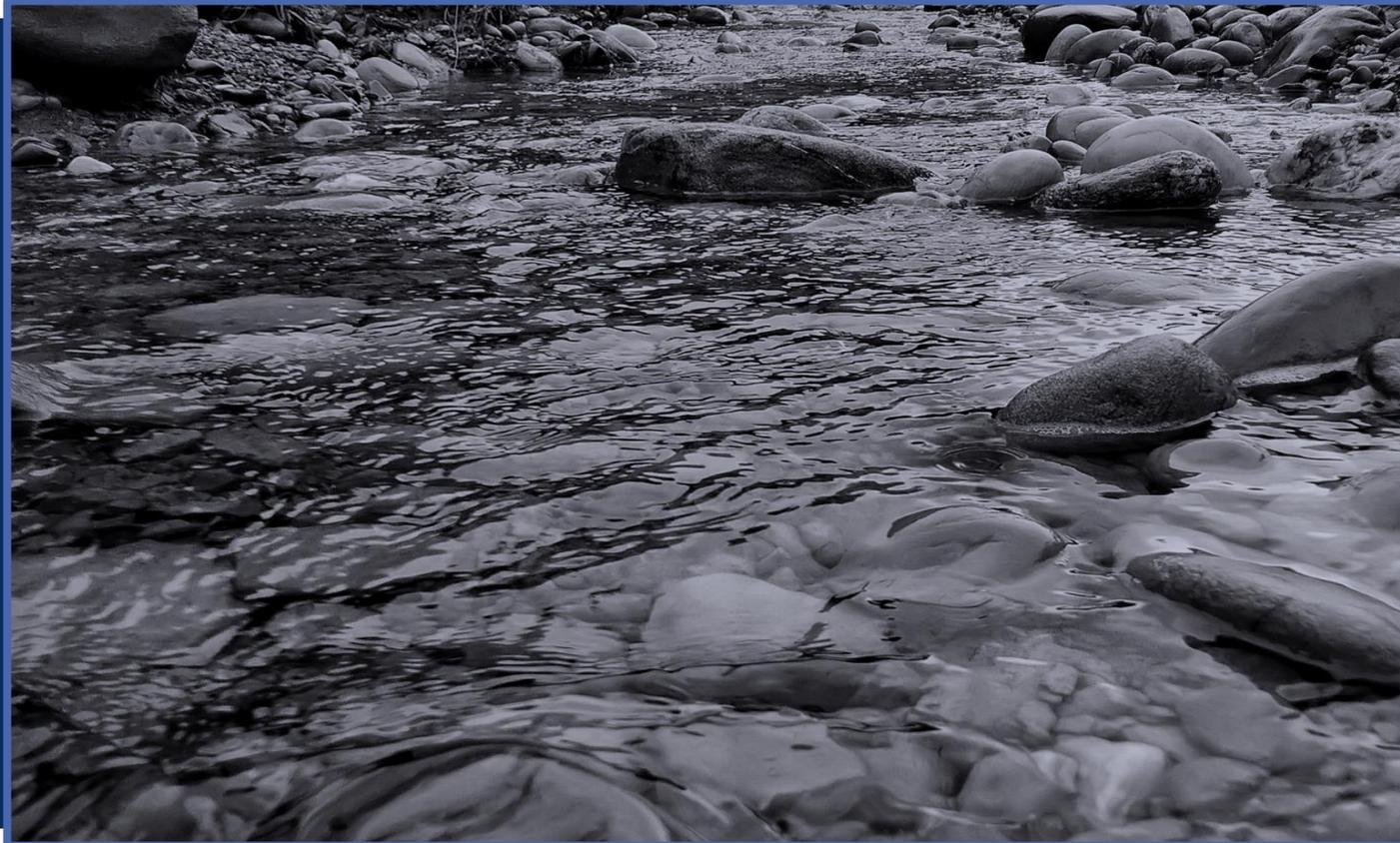
# Overview

CWA section 401 Background  
Certification Process

Post-Certification Process

CWA 401 and 401(a)(2) TAS

TAS application templates



# Clean Water Act Regulatory TAS Opportunities

1

## CWA section 303(c)

- Water Quality Standards
- May concurrently include CWA section 401 TAS

[CWA 303\(c\) webpage](#)

2

## CWA section 303(d)

- Impaired Waters Listing
- Total Maximum Daily Load Program

[CWA 303\(d\) webpage](#)

3

## CWA sections 401 and 401(a)(2)

- Water Quality Certification
- Neighboring Jurisdictions Process

[CWA 401 webpage](#)

4

## CWA section 402

- National Pollution Discharge Elimination System Permits

[CWA 402 webpage](#)

5

## CWA section 404

- Discharge of Dredge and Fill Materials

[CWA 404 webpage](#)

# Clean Water Act Regulatory TAS Opportunities

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- Impaired Waters Listing
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## CWA sections 401 and 401(a)(2)

- Water Quality Certification
- Neighboring Jurisdictions Process

[CWA 401 webpage](#)

4

## CWA section 402

- National Pollution Discharge Elimination System Permits

[CWA 402 webpage](#)

5

## CWA section 404

- Discharge of Dredge and Fill Materials

[CWA 404 webpage](#)

# Background:

## What is Clean Water Act (CWA) section 401?

Under CWA section 401:

A federal agency may *not* issue a license or permit to conduct any activity that may result in any discharge into “waters of the United States”, *unless* the state or authorized tribe where the discharge would originate either issues a CWA Section 401 water quality certification or waives certification.

Section 401 applies to *any* federal license or permit that may result in a discharge into waters of the United States.

# When section 401 certification is required

Section 401 certification is required for **any** Federal license or permit to conduct any activity that may result in any discharge from a point source into “waters of the United States.”

**Examples** of Federal license or permits that may trigger the need to seek section 401 certification



**EPA-issued CWA section 402 permits** for discharge of pollutants



**FERC certificates** for construction/operation of interstate natural gas pipeline projects



**CWA section 404 permits** issued by Corps for discharge of dredge/fill materials



**Shoreline permits** issued by Tennessee Valley Authority for shoreline construction activities



**Rivers and Harbors Act section 10 permits** issued by Corps for construction of wharfs, piers, etc.

	<i>Does it trigger section 401?</i>
<b>Individual</b> licenses or permits	✓
<b>General</b> licenses or permits	✓
Corps Civil Works projects	✓
Permits issued by states or tribes pursuant to their authorized or approved programs	✗

# Who is involved in CWA section 401 certification?



## PROJECT PROPONENT

applicant for a federal license or permit, or the entity seeking certification



## CERTIFYING AUTHORITY

a state or authorized tribe where the discharge originates



All 50 states, the District of Columbia, and the territories

Tribes with “treatment in a similar manner as a state” (TAS) for section 401

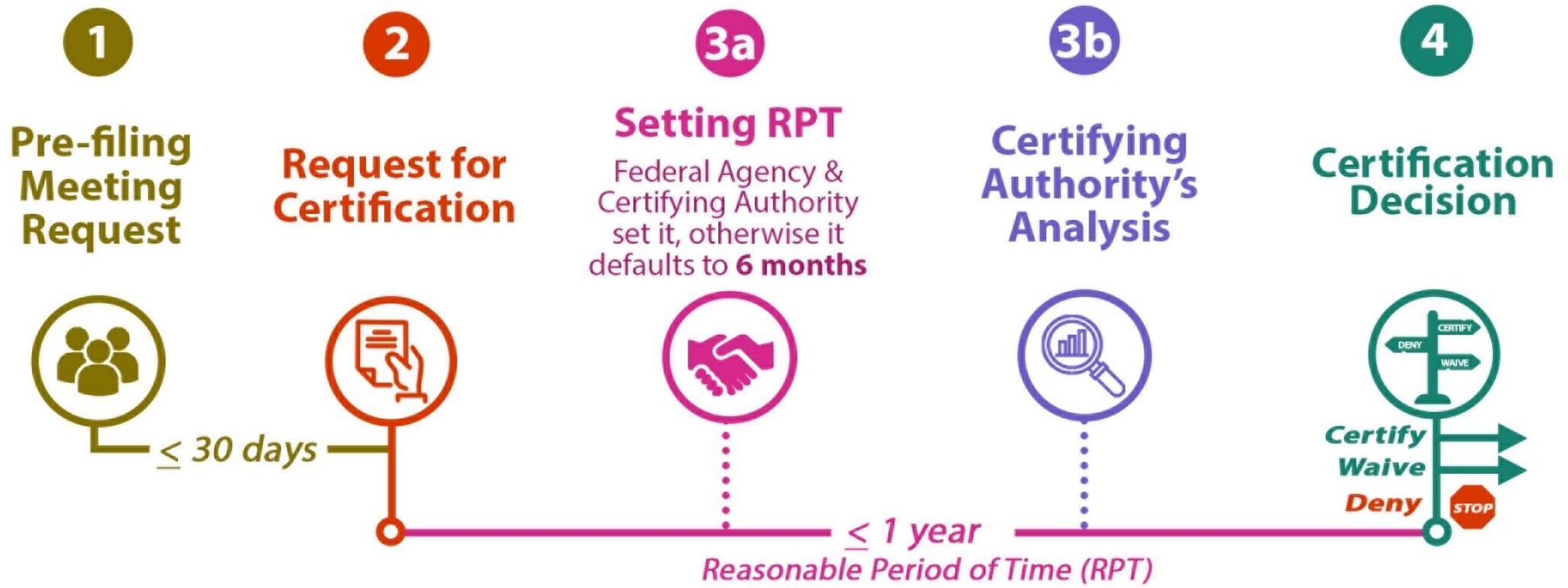
EPA acts as the certifying authority where there is no authorized tribe or state



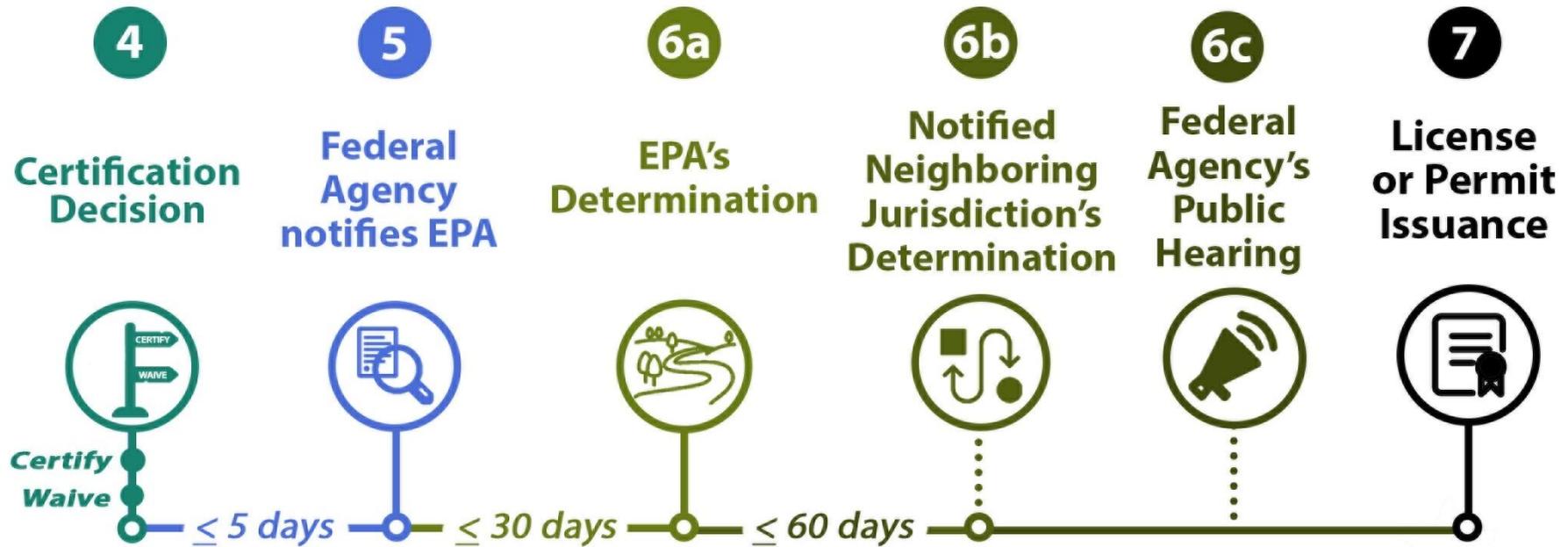
## FEDERAL LICENSING OR PERMITTING AGENCY

any agency of the Federal Government to which application is made for a Federal license or permit that is subject to CWA section 401

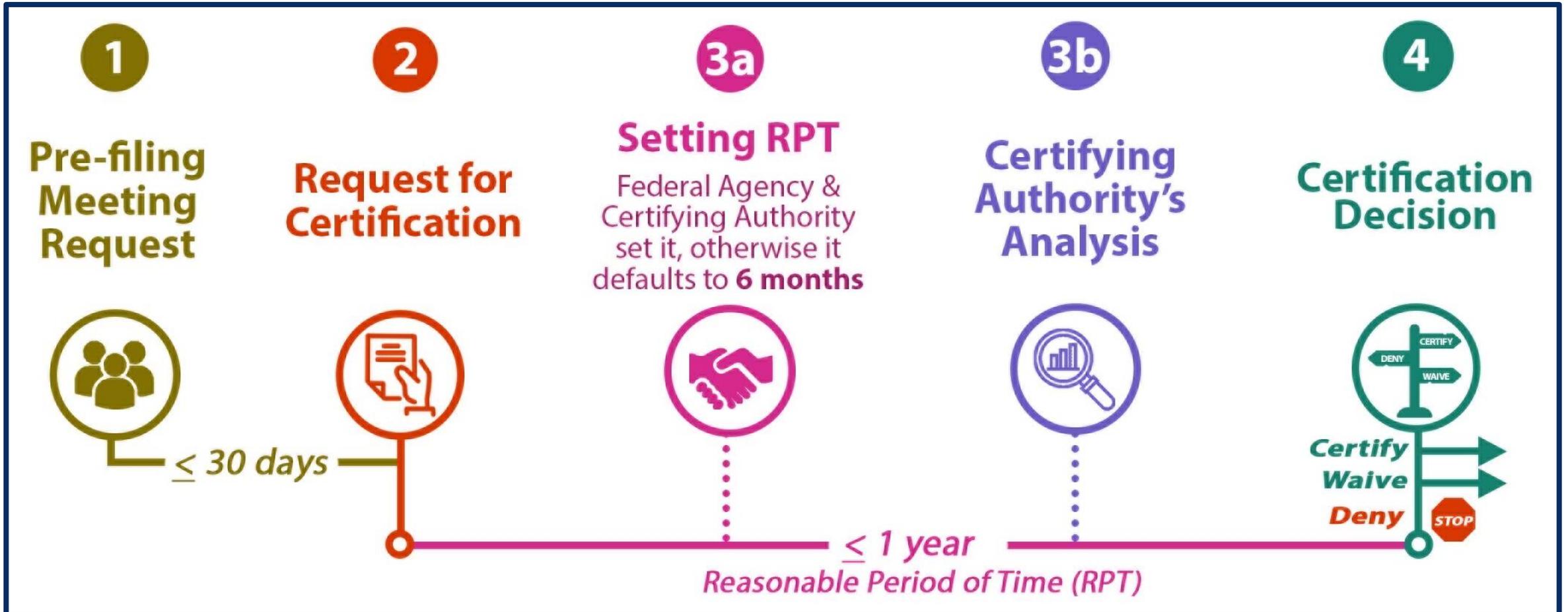
# Certification



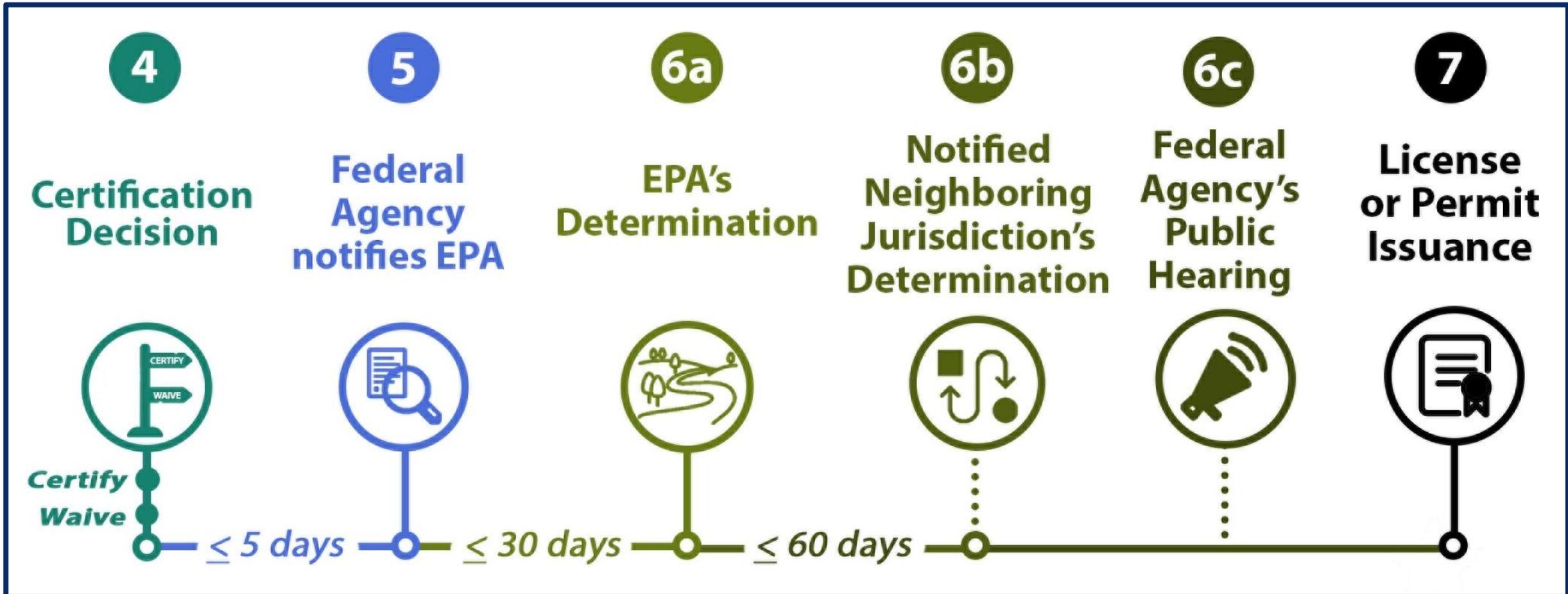
# Post-Certification



# Final 2023 Rule: Certification Process



# Final 2023 Rule: Post-Certification Process





# TAS for the section 401 program



## FINAL 2023 RULE

A Tribe may obtain TAS for section 401 **without** obtaining TAS for CWA section 303(c) water quality standards. A Tribe may also obtain TAS solely for section 401(a)(2) to participate as a neighboring jurisdiction.



## PRE-FINAL 2023 RULE

Tribes could obtain TAS for section 401 through the TAS process for water quality standards (section 303(c)).

TAS

# Treatment in a similar manner as a state (TAS)

## Upon receiving TAS for section 401, Tribes have two roles:



- 1) Responsible for acting as a **certifying authority** for projects that may result in a discharge into waters of the United States on their Indian reservations

*As certifying authorities, Tribes with TAS may **grant, grant with conditions, deny, or waive** certification based on whether a federally licensed or permitted project will comply with sections 301, 302, 303, 306, and 307 of the CWA and any other appropriate requirements of Tribal law.*



- 2) Accorded the status of “**neighboring jurisdiction**” for purposes of section 401(a)(2):

*If EPA makes a “may affect” finding, the notified neighboring jurisdiction may object to the issuance of the Federal license or permit if they determine that a discharge from the project “will violate” any of its water quality requirements and request a public hearing from the Federal licensing or permitting agency*

# Roles/Responsibilities

## TAS for Section 401 Certification

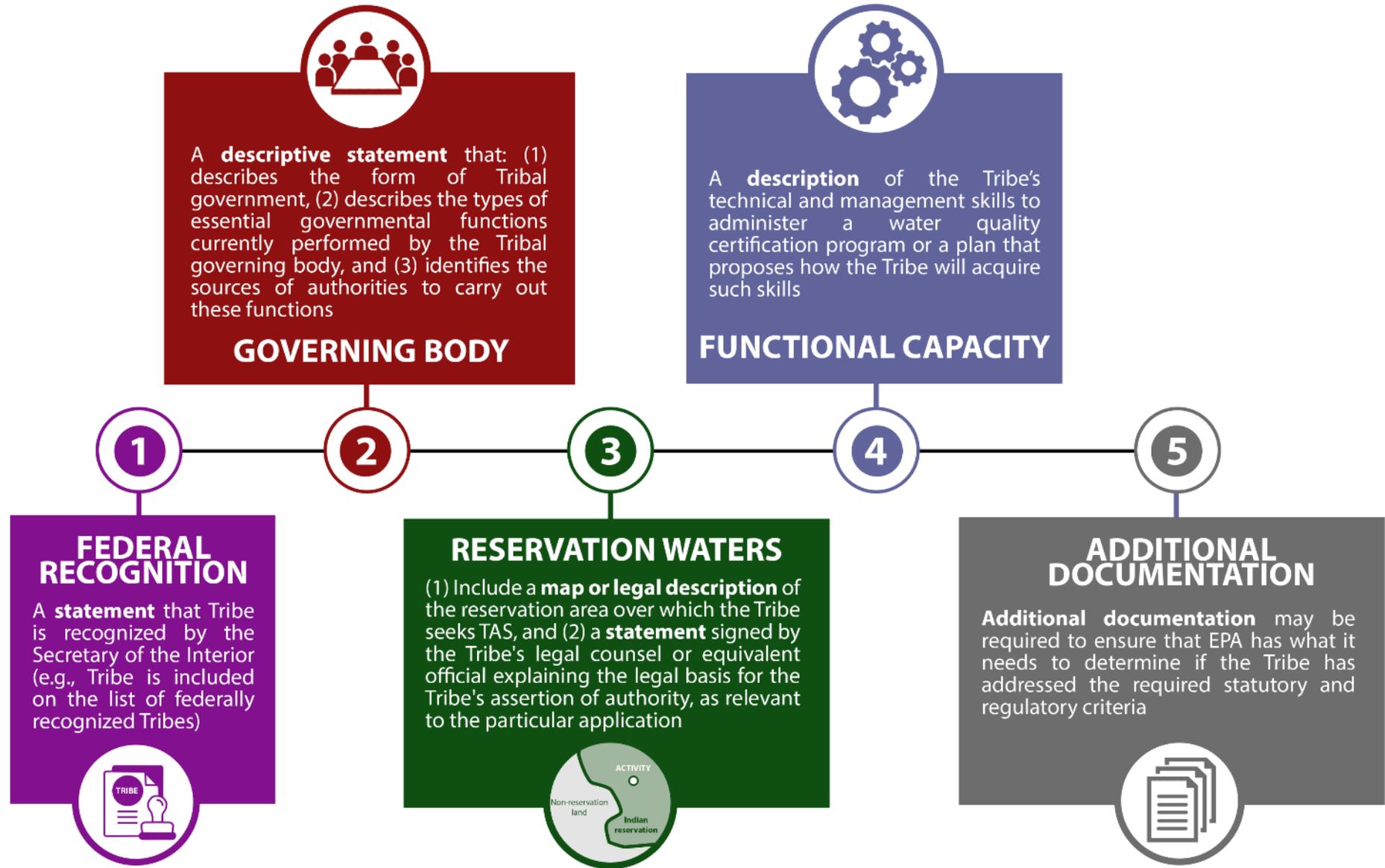
- ✓ Tribe eligible to determine when a federal license or permit applicant must **request a pre-filing meeting** with the tribe on their project?
- ✓ Tribe responsible for **receiving requests for certification** from federal license or permit project applicants?
- ✓ Tribe responsible for **collaborating** with the federal agency **to set the timeframe** to review requests for certification?
- ✓ Tribe responsible for **issuing certification** on federally licensed or permitted projects?
- ✓ Tribe eligible to **receive notice** when EPA determines a discharge **may affect** a neighboring Tribal jurisdiction's water quality?
- ✓ Tribe responsible for **determining whether a discharge** from another jurisdiction **will violate** tribal water quality requirements?

## TAS for Section 401(a)(2) Neighboring Jurisdictions Process





# TAS Application Criteria



# Section 401 TAS application templates

An official website of the United States government [Here's how you know](#) ▾

EPA United States Environmental Protection Agency

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Environmental Topics ▾ Laws & Regulations ▾ Report a Violation ▾ About EPA ▾

## CWA Section 401 Certification

CONTACT US

Section 401 Certification Home

Basic Information on Section 401 Certification

Read Section 401

Final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule

Treatment in a Similar Manner as a State (TAS) for Clean Water Act Section 401

Treatment in a Similar Manner as a State (TAS) for Clean Water Act Section 401(a)(2)

Outreach and Engagement on CWA Section 401 Certification

Contact Us

### Treatment in a Similar Manner as a State (TAS) for Clean Water Act Section 401

Under the Clean Water Act Section 401 Water Quality Certification Improvement Rule (2023 Rule), Tribes **may obtain treatment in a similar manner as a state (TAS) solely for section 401** or obtain TAS for the limited purpose of participating as a neighboring jurisdiction under section 401(a)(2). Tribes have the opportunity to participate directly in the certification process without applying for water quality standards by applying for TAS for the section 401 program. Tribes should consider TAS for the section 401 program if they are interested in issuing certification decisions for their reservation (CWA Section 401(a)(1)) or participating in the neighboring jurisdiction process (CWA Section 401(a)(2)).

**Application Template for Section 401**

[TAS Application Template for Administering a CWA Section 401 Water Quality Certification Program \(docx\)](#) (759.8 KB)

The Agency developed an **application template** to provide explanations and instructions for documenting how the Tribe meets the eligibility requirements to obtain TAS for section 401 in its entirety. There is a separate application template for Tribes interested in [participating as a neighboring jurisdiction under section 401\(a\)\(2\) alone](#).

**Template for Section 401(a)(2) Alone**

A separate webpage with the application template for

Upon receiving TAS for section 401, Tribes have two roles. First, Tribes that receive section 401 TAS are responsible for acting as a certifying authority for projects that may result in a discharge into waters of the United States on their Indian reservations. As

[Link to 401 TAS webpage](#)  
[Link to 401 TAS application template](#)



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### Treatment in a Similar Manner as a State (TAS) for Clean Water Act Section 401(a)(2)

Under the Clean Water Act Section 401 Water Quality Certification Improvement Rule (2023 Rule), Tribes may obtain treatment in a similar manner as a state (TAS) solely for section 401 or **obtain TAS for the limited purpose of participating as a neighboring jurisdiction under section 401(a)(2)**. Tribes have the opportunity to participate directly in the certification process without applying for water quality standards by applying for TAS for the section 401 program. Tribes should consider TAS for the section 401 program if they are interested in issuing certification decisions for their reservation (CWA Section 401(a)(1)) or participating in the neighboring jurisdiction process (CWA Section 401(a)(2)).

**Application Template for Section 401(a)(2)**

[TAS Application Template for Participating in the Section 401\(a\)\(2\) Process as a Neighboring Jurisdiction \(docx\)](#) (750.4 KB)

The Agency developed an **application template** to provide explanations and instructions for documenting how the Tribe meets the eligibility requirements to obtain TAS for section 401(a)(2) alone. There is a separate application template for Tribes interested in [obtaining TAS for section 401 in its entirety](#).

**Template for Section 401 in its Entirety**

A separate webpage with the application template for Tribes interested in

Upon receiving TAS for section 401, Tribes have two roles. First, Tribes that receive section 401 TAS are responsible for acting as a certifying authority for projects that may result in a discharge into waters of the United States on their Indian reservations. As certifying authorities, Tribes with TAS may grant, grant with conditions, deny, or refuse certification based on whether

[Link to 401\(a\)\(2\) TAS webpage](#)  
[Link to 401\(a\)\(2\) TAS application template](#)

## TAS Application Template for Administering a CWA Section 401 Water Quality Certification Program

This template is intended to assist interested Tribes in applying to EPA for eligibility to be treated in a similar manner as a state (TAS) for the purpose of administering the Clean Water Act (CWA) section 401 water quality certification program. The template provides a simple explanation and organization of relevant language to address the eligibility requirements for TAS approval for the section 401 program. This template does not apply to applications for TAS for section 303(c)<sup>1</sup> or section 401(a)(2)<sup>2</sup>.

### Overview

Water quality certification is a powerful tool to protect Tribal water quality from adverse impacts from federally licensed or permitted projects (Figure 1). Under section 401, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into “waters of the United States” unless the authorized Tribe or state with jurisdiction over where the discharge will originate provides a section 401 water quality certification or waiver of section 401 water quality certification.



**Figure 1.** The process for applying for treatment in a similar manner as a state (TAS) for section 401 starts with the interest of a Tribe to participate in the certification process. Those interested may fill out a TAS application, which includes four main requirements (see below). Once a Tribe receives TAS, they should implement a section 401 water quality certification program and conduct the responsibilities required of a certifying authority.

Section 401 applies to *any* federally licensed or permitted activity that may result in any point source discharge into waters of the United States. The most common examples of federal licenses and permits that may be subject to section 401 certification include:

<sup>1</sup> Tribes may continue to use the separate template available at <https://www.epa.gov/wqs-tech/water-quality-standards-tools-tribes> to apply for TAS for section 303(c) and section 401 concurrently if the Tribe is also interested in administering a section 303(c) water quality standards (WQS) program.

<sup>2</sup> Tribes may also use the separate template for TAS for the purpose of participating in the section 401(a)(2) process as a neighboring jurisdiction. Please note that if the Tribe is applying to administer the section 401 water quality certification program, this includes carrying out the responsibilities of a neighboring jurisdiction under section 401(a)(2). If a Tribe is only applying for TAS for the section 401(a)(2) process, the Tribe will not receive the authority under section 401(a)(1) to issue certification decisions.

## First section of 401 TAS materials includes:

- Overview of 401
- Obtaining TAS
- Application Checklist
- Responsibilities
- Processing Procedures
- Funding Opportunities
- Additional Resources

## TAS Application Template for Participating in the Section 401(a)(2) Process as a Neighboring Jurisdiction

This template is intended to assist interested tribes in applying to EPA for eligibility to be treated in a similar manner as a state (TAS) for the purpose of participating in the section 401(a)(2) neighboring jurisdictions process. The template provides a simple explanation and organization of relevant language to address the eligibility requirements for TAS approval for this non-regulatory program. This template does not apply to applications for TAS for section 303(c)<sup>1</sup> or the entire section 401<sup>2</sup> certification program.

### Overview

Water quality certification is a powerful tool to protect Tribal water quality from adverse impacts from federally licensed or permitted projects. Under section 401, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into “waters of the United States” unless the authorized Tribe or state with jurisdiction over where the discharge will originate provides a section 401 water quality certification or waiver of section 401 water quality certification.

Once a certifying authority issues a section 401 water quality certification or waiver, a neighboring jurisdiction (which includes authorized Tribes and states) has the opportunity to provide input on the issuance of the federal license or permit if EPA determines that a discharge from the certified or waived project may affect the water quality of a neighboring jurisdiction (Figure 1). A federal license or permit may not be issued until the neighboring jurisdictions process concludes. 33 U.S.C. 1341(a)(2); 40 CFR 121.13(d).



**Figure 1.** Treatment in a similar manner as a state (TAS) for the section 401(a)(2) process starts with the interest of a Tribe to participate in the certification process as a neighboring jurisdiction. Those

<sup>1</sup> Tribes may continue to use the separate template available at <https://www.epa.gov/wqs-tech/water-quality-standards-tools-tribes> to apply for TAS for section 303(c) and section 401 concurrently if the Tribe is also interested in administering a section 303(c) water quality standards (WQS) program.

<sup>2</sup> Tribes may also use the separate template (see <https://www.epa.gov/cwa-401>) for TAS for the purpose of administering the section 401 certification program. Please note that if the Tribe is applying to administer the section 401 water quality certification program, this includes carrying out the responsibilities of a neighboring jurisdiction under section 401(a)(2). If a Tribe is only applying for TAS for the section 401(a)(2) process, the Tribe will not receive eligibility under section 401(a)(1) to issue certification decisions.

## 401 TAS

Please read the accompanying instructions and coordinate with the appropriate EPA Regional Office before using this template.

### TEMPLATE FOR TAS APPLICATION – SECTION 401 WATER QUALITY CERTIFICATION PROGRAM

[Enter Full Name of Tribe or use the Tribe's letterhead]

#### APPLICATION FOR CLEAN WATER ACT ELIGIBILITY TO ADMINISTER A SECTION 401 WATER QUALITY CERTIFICATION PROGRAM<sup>6</sup>

The [enter name of Tribe] hereby applies under section 518 of the Clean Water Act (CWA) to the U.S. Environmental Protection Agency to become eligible to be treated in a similar manner as a state (TAS) to administer a section 401 water quality certification program.

#### 1. BACKGROUND [Optional section]

[The Tribe may choose to include this section to provide background information, e.g., Tribal history, Tribal water resources, why the Tribe is applying for TAS for all of section 401.]

#### 2. FEDERAL RECOGNITION (40 CFR 121.11(a)(1) and (b)(1))

The Tribe is listed as “[enter name of Tribe as shown on BIA list]” in the Secretary of the Interior’s list of federally recognized tribes at 88 FR 2112, January 12, 2023 [check with Regional Office to ensure that this is the most recent citation to use].

#### 3. AUTHORITY OVER A FEDERAL INDIAN RESERVATION (40 CFR 121.11(a)(1) and 121.1(e))

The Tribe exercises governmental authority over a federal Indian reservation. [If applicable, include the following sentence] This includes lands held by the United States in trust for the tribal government that are not located within the boundaries of a formal reservation. See section 5 of this application for more information about the description of the Tribe’s reservation lands.

#### 4. TRIBAL GOVERNANCE (40 CFR 121.11(a)(2) and (b)(2))

The [enter name of Tribe] has a governing body carrying out substantial governmental duties and powers. [If applicable, include the following sentence] See the Tribe’s previous TAS

<sup>6</sup> Note that if the Tribe is applying to administer the section 401 water quality certification program, this includes carrying out the responsibilities of a neighboring jurisdiction under section 401(a)(2).

## Second section of 401 TAS materials includes:

- TAS application template with where Tribe fills in [blue text]

## 401(a)(2) TAS

Please read the accompanying instructions and coordinate with the appropriate EPA Regional Office before using this template.

### TEMPLATE FOR TAS APPLICATION – CWA SECTION 401(a)(2) NEIGHBORING JURISDICTIONS PROCESS

[Enter Full Name of Tribe or use the Tribe's letterhead]

#### APPLICATION FOR CLEAN WATER ACT ELIGIBILITY TO BE A NEIGHBORING JURISDICTION FOR THE PURPOSES OF SECTION 401(a)(2)<sup>5</sup>

The [enter name of Tribe] hereby applies under section 518 of the Clean Water Act (CWA) to the U.S. Environmental Protection Agency to become eligible to be treated in a similar manner as a state (TAS) to be a neighboring jurisdiction for the purposes of section 401(a)(2).

#### 1. BACKGROUND [Optional section]

[The Tribe may choose to include this section to provide background information, e.g., Tribal history, Tribal water resources, why the Tribe is applying for TAS for section 401(a)(2).]

#### 2. FEDERAL RECOGNITION (40 CFR 121.11(a)(1) and (b)(1))

The Tribe is listed as “[enter name of Tribe as shown on BIA list]” in the Secretary of the Interior’s list of federally recognized tribes at 88 FR 2112, January 12, 2023 [check with Regional Office to ensure that this is the most recent citation to use].

#### 3. AUTHORITY OVER A FEDERAL INDIAN RESERVATION (40 CFR 121.11(a)(1) and 121.1(e))

The Tribe exercises governmental authority over a federal Indian reservation. [If applicable, include the following sentence] This includes lands held by the United States in trust for the tribal government that are not located within the boundaries of a formal reservation. See section 5 of this application for more information about the description of the Tribe’s reservation lands.

#### 4. TRIBAL GOVERNANCE (40 CFR 121.11(a)(2) and (b)(2))

The [enter name of Tribe] has a governing body carrying out substantial governmental duties and powers. [If applicable, include the following sentence] See the Tribe’s previous TAS

<sup>5</sup> Note that if the Tribe is only applying to be a neighboring jurisdiction for the purposes of section 401(a)(2), this does not include the responsibilities for a certifying authority under section 401(a)(1).

## Instructions for Use of Template

## COORDINATION WITH EPA

**EPA recommends that the applicant Tribe coordinate with the appropriate EPA Regional Office in using this template.**

Depending on circumstances, more information may be needed than is shown explicitly in this template. EPA's regulation at 40 CFR 121.11(b)(5) provides that the Regional Administrator may require additional documentation to support the tribal application. EPA will be judicious in requesting additional information to avoid unnecessarily delaying the Tribal application process.

If a Tribe plans to refer to previous application information in its application package, the Regional Office can assist by verifying in its files the previous application information to which the Tribe refers.

## HOW TRIBES CAN USE THIS TEMPLATE

Any Tribe can use this template to develop a TAS application to administer a CWA section a section 401 water quality certification program.<sup>1</sup>

The template will be of most use to Tribes that have previously qualified for one or more other EPA programs and that wish to refer to information contained in those previous TAS applications in this new application.<sup>2</sup> The

<sup>1</sup> This template is designed for Tribes that apply for TAS for the section 401 program. If the Tribe is interested in only administering the section 401(a)(2) program, the Tribe is encouraged to use EPA's separate application template for TAS for a section 401(a)(2) neighboring jurisdictions program. If the Tribe is interested in administering the section 303(c) water quality standards program and section 401 program, the Tribe encouraged to use EPA's separate joint application template for TAS for a section 303(c) water quality standards program and TAS for a section 401 program. Tribes applying for only one of these programs or both the CWA section 303(c) and 401

template generally assumes that such prior TAS applications and approvals exist and that certain information from the prior application(s) will be relevant and transferable to the current TAS application for section 401. If there have been no such prior TAS applications/approvals, this template may be of limited value because the Tribe will need to provide the full information specified in 40 CFR 121.11.

## HOW WILL EPA REVIEW THE TRIBE'S TAS APPLICATION

EPA will review and process a Tribe's TAS application in accordance with the regulation at [40 CFR 121.11\(c\)](#). EPA will consider the information that the Tribe provides in its application, which may be based on the structure and information described in the template, and any information in previous TAS applications to which the application refers, in determining whether the Tribe qualifies for TAS.

Before making its decision, EPA's regulations require the Regional Office to provide notice of a Tribe's assertion of authority over waters included in its TAS application to appropriate governmental entities (states, Tribes, and other federal entities located contiguous to the reservation of the Tribe applying for TAS) for comment. Consistent with established Agency practice, EPA Regions also provide sufficiently wide notice of an applicant tribe's assertion of

programs should consult with the Regional Office, which can assist in providing the appropriate template for that purpose.

<sup>2</sup> Section 121.11(b) provides that, in this situation, the Tribe that has previously qualified for TAS need only provide the required information which has not been submitted in a previous application. Examples of information that may be transferable from a prior application include descriptions of the Tribe's governmental functions, and information demonstrating the boundaries of a reservation and the relevant waters of the reservation.

## Third section of 401 TAS materials includes:

- Instructions on how to use the application template
- Additional resources on the application components and review process

## Instructions for Use of Template

## COORDINATION WITH EPA

**EPA recommends that the applicant Tribe coordinate with the appropriate EPA Regional Office in using this template.**

Depending on circumstances, more information may be needed than is shown explicitly in this template. EPA's regulation at 40 CFR 121.11(b)(5) provides that the Regional Administrator may require additional documentation to support the tribal application. EPA will be judicious in requesting additional information to avoid unnecessarily delaying the Tribal application process.

If a Tribe plans to refer to previous application information in its application package, the Regional Office can assist by verifying in its files the previous application information to which the Tribe refers.

## HOW TRIBES CAN USE THIS TEMPLATE

Any Tribe can use this template to develop a TAS application to participate as a neighboring jurisdiction under CWA section 401(a)(2).<sup>1</sup>

The template will be of most use to Tribes that have previously qualified for one or more other EPA programs and that wish to refer to information contained in those previous TAS applications in this new application.<sup>2</sup> The template generally assumes that such prior TAS applications and approvals exist and that certain information from the prior application(s) will be relevant and transferable to the current TAS application for section 401(a)(2). If there

have been no such prior TAS applications/approvals, this template may be of limited value because the Tribe will need to provide the full information specified in 40 CFR 121.11.

## HOW WILL EPA REVIEW THE TRIBE'S TAS APPLICATION

EPA will review and process a Tribe's TAS application in accordance with the regulation at [40 CFR 121.11\(c\)](#). EPA will consider the information that the Tribe provides in its application, which may be based on the structure and information described in the template, and any information in previous TAS applications to which the application refers, in determining whether the Tribe qualifies for TAS.

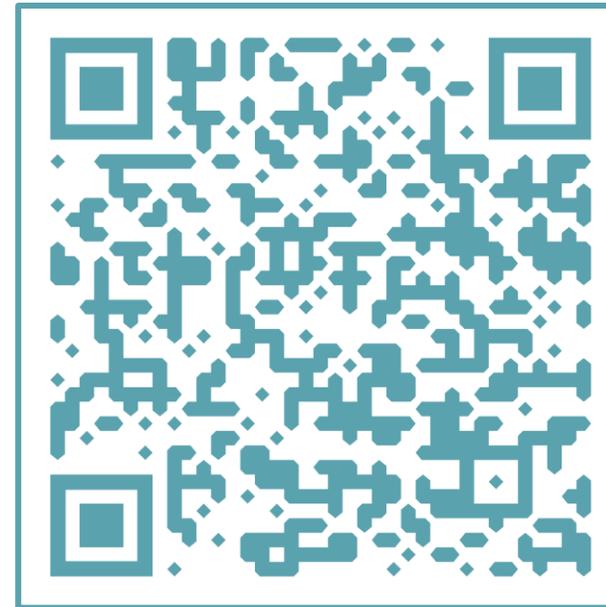
Before making its decision, EPA's regulations require the Regional Office to provide notice of a Tribe's assertion of authority over waters included in its TAS application to appropriate governmental entities (states, Tribes, and other federal entities located contiguous to the reservation of the Tribe applying for TAS) for comment. Consistent with established Agency practice, EPA Regions also provide sufficiently wide notice of an applicant tribe's assertion of authority so as to notify local governments and the local public. See [88 FR 66558]. When requested, the Office of Wetlands, Oceans and Watersheds in EPA headquarters can assist the Regional Office by establishing a website on which to post the Tribe's application and supporting material to assist with these notification procedures.

<sup>1</sup> This template is designed for Tribes that apply for TAS for the section 401(a)(2) role. If the Tribe is interested in administering the entire section 401 program, the Tribe is encouraged to use EPA's separate application template for TAS for a section 401 certification program. If the Tribe is interested in administering the section 303(c) water quality standards program and section 401 program, the Tribe encouraged to use EPA's separate joint application template for TAS for a section 303(c) water quality standards program and TAS for a section 401 program. Tribes applying for only one of these programs or both the CWA section 303(c) and 401 programs should consult with the Regional Office, which can assist in providing the appropriate template for that purpose.

<sup>2</sup> Section 121.11(b) provides that, in this situation, the Tribe that has previously qualified for TAS need only provide the required information which has not been submitted in a previous application. Examples of information that may be transferable from a prior application include descriptions of the Tribe's governmental functions, and information demonstrating the boundaries of a reservation and the relevant waters of the reservation.

# Section 303(c) TAS application template

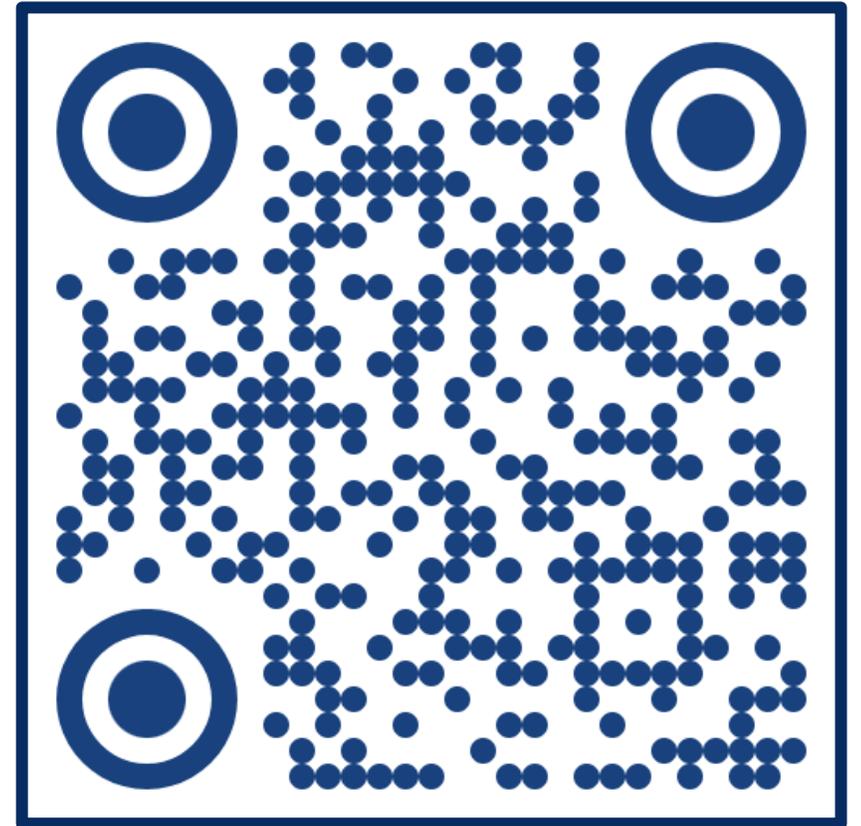
The screenshot shows the EPA website's "Water Quality Standards: Regulations and Resources" page. The main heading is "Tribes and Water Quality Standards". The page includes a sidebar with navigation links such as "WQS Home", "What are Water Quality Standards?", "Federal WQS Requirements", "Standards in Your Area", "Federally Promulgated WQS for Specific States, Territories, and Tribes", "Tribes and Water Quality Standards" (highlighted), "EPA Actions on Tribal WQS and Contacts", "WQS Handbook", "Reference Library of WQS Policy and Guidance Documents", "WQS Academy", and "Receive Alerts about WQS News and Events". The main content area explains that WQS provide the regulatory and scientific foundation for protecting water quality under the Clean Water Act (CWA). It states that WQS not only set water quality goals for a tribe's water bodies but also serve as the regulatory basis for establishing water quality-based treatment controls and strategies. To administer a WQS program under the CWA, a tribe must apply to EPA for authorization to be treated in a similar manner as a state (TAS). A "Rulemakings" sidebar lists several links: "Promulgation of Tribal Baseline Water Quality Standards Under the Clean Water Act", "Revising the Federal Water Quality Standards Regulations to Protect Tribal Reserved Rights", and "Advance Notice of Proposed Rulemaking - Federal Baseline Water Quality Standards for Indian Reservations". At the bottom, the text "Treatment in a Similar Manner as States (TAS)" is displayed.



[Link to 303\(c\) Tribal webpage](#)  
[Link to 303\(c\) TAS application template](#)

# More Information

Please visit the  
CWA Section 401 website,  
<https://www.epa.gov/cwa-401>



# Available Resources

## One-page Fact sheet (in English and Spanish)



**Clean Water Act Section 401 Water Quality Certification Improvement Rule**

Under Clean Water Act (CWA) section 401, Congress provides states, territories, and Tribes with a tool to protect water from adverse impacts that could result from federally licensed or permitted projects. The final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule (2023 Rule) restores the fundamental authority granted by Congress to states, territories, and Tribes to protect water resources that are essential to healthy people and thriving communities. The 2023 rule will support clear, efficient, and focused water quality reviews of infrastructure and development projects that are key to economic growth.

**Overview of the Final 2023 Rule:**  
The final rule provides stakeholders with a clear and consistent certification process while ensuring protection of vital state, territory, and Tribal water resources by:

- Supporting flexible, early coordination with stakeholders – The 2023 Rule provides states, territories, and Tribes with the flexibility to engage with project proponents and federal agencies before the certification process begins. State, territory, and Tribal certifying authorities may decide when a pre-filing meeting request will lead to a more efficient certification process.
- Clearly defining the contents necessary to start the certification process – The 2023 Rule creates a bright-line approach to defining the required contents in a request for certification, limiting delays for project proponents, while still allowing state, territory, and Tribal certifying authorities to define the water quality-related information necessary to start the certification process.
- Ensuring actions occur within the 1-year statutory timeframe – The 2023 Rule allows certifying authorities to collaborate with federal agencies to determine the timeframe for review, up to the one-year statutory maximum. To ensure timely action and negotiations, the 2023 Rule provides a 6-month default timeframe (half of the statutory maximum) if the certifying authority and federal agency do not agree on a timeframe.
- Focusing on the water quality-related impacts of federal projects – The 2023 Rule realigns the scope of section 401 certification with nearly 50 years of established practice that preceded the 2020 Rule. Simultaneously the 2023 Rule addresses stakeholder concerns regarding past practice and provides regulatory certainty by clarifying important concepts such as emphasizing that states, territories, and Tribes may only consider the adverse water quality impacts from the activity.
- Allowing projects to adapt easily and predictably to shifting context – The 2023 Rule does not allow states, territories, and Tribes to unilaterally modify certifications, but instead allows them to collaborate with federal agencies to do so. This balances certifying authorities' needs for flexibility (to protect water quality over the life of a project) and the potential for agencies.

For more information:  
To learn more about the CWA Section 401 water quality certification process, please visit the [CWA Section 401 website](#). Available implementation Frequently Asked Questions, and fact sheets (in English and Spanish) (ID No. EPA-HQ-OW-2022-0128) can be found at [Regulations](#).

## Rule Provision Comparison

Appendix A. Rule Provision Comparison  
Table A-1 compares major rule provisions, in plain language, under the 1971 Rule, the 2020 Rule, and the final rule.

Table A-1. Comparison of rule provisions under the 1971 Rule, the 2020 Rule, and the final rule		
1971 Rule and Practice	2020 Rule	Final Rule
<b>When certification is required</b>		
<ul style="list-style-type: none"> <li>A project proponent must request section 401 certification from the appropriate certifying authority if a federally licensed or permitted activity may result in a discharge into waters of the United States.</li> <li>While not addressed in 1971 Rule, case law from the 9th Circuit held that only a point source discharge triggers section 401 (ONDA v. Dombeck, 172 F.3d 1092 (9th Cir. 1999)).</li> </ul>	<ul style="list-style-type: none"> <li>Same as 1971 practice, but the regulatory text explicitly provided that certification is required for any license or permit that authorizes an activity that may result in a discharge.</li> <li>Defined "discharge" for purposes of section 401 as a discharge from a point source into a water of the United States, consistent with ONDA.</li> </ul>	<ul style="list-style-type: none"> <li>Same as 1971 practice, but the regulatory text explicitly provides that a certification or waiver is required for any license or permit that authorizes any activity which may result in a point source discharge into waters of the United States.</li> <li>Preamble provides that a discharge for purposes of section 401 is a discharge from a point source into waters of the United States, consistent with ONDA.</li> </ul>
<b>Pre-filing meeting request</b>		
<ul style="list-style-type: none"> <li>Pre-filing meeting requests were not required by rule but were encouraged by some certifying authorities.</li> </ul>	<ul style="list-style-type: none"> <li>Project proponents were required to request a pre-filing meeting with a certifying authority at least 30 days before requesting certification.</li> </ul>	<ul style="list-style-type: none"> <li>Project proponents are required to request a pre-filing meeting with a certifying authority at least 30 days prior to requesting certification, unless waived or shortened by the certifying authority.</li> </ul>
<b>Request for certification</b>		
<ul style="list-style-type: none"> <li>Included five components that must be in a certification request when EPA is the certifying authority.</li> <li>Did not define a certification request for other certifying authorities.</li> <li>In practice, some states and authorized Tribes</li> </ul>	<ul style="list-style-type: none"> <li>Required all certification requests to be written, signed, and dated and include either seven or nine components, which are based on whether the certification request was for an individual license or permit, or the issuance of a general license or permit.</li> </ul>	<ul style="list-style-type: none"> <li>Requires all requests for certification to be in writing, signed, and dated.</li> <li>If the request for certification is for an individual license or permit, it must include a copy of the license or permit application submitted to the federal agency and any</li> </ul>

## Overview Fact sheet (in English and Spanish)



**Clean Water Act Section 401 Water Quality Certification Improvement Rule**  
September 2023

EPA is finalizing a rule to support a timely and predictable water quality certification process under Clean Water Act (CWA) section 401. The final 2023 CWA Section 401 Water Quality Certification Improvement Rule (2023 Rule) is grounded in the fundamental authority granted by Congress to states, territories, and Tribes to protect water resources that are essential to healthy people and thriving communities over the past 50 years. For more information on the 2023 Rule, see the [CWA Section 401 website](#).

**Overview: Section 401 Empowers States, Territories, and Tribes to Protect Vital Waters**  
Under CWA section 401, Congress provides states, territories, and Tribes with a tool to protect their waters from adverse impacts that could result from federally licensed or permitted projects. As required by CWA section 401, an applicant for a federal license or permit that may result in a discharge into waters of the United States must obtain a water quality certification or waiver from the certifying authority. Certifying authorities are typically a state (which includes territories) or a Tribe with treatment in a similar manner as a state (TAS).

Federal licenses and permits that may require section 401 water quality certification include, but are not limited to, CWA section 404 dredge and fill permits from the Army Corps of Engineers (Corps), hydroelectric licenses from the Federal Energy Regulatory Commission (FERC), and CWA section 402 pollutant discharge permits from EPA. A broad range of individuals and entities seek section 401 certification for projects requiring these kinds of permits, including businesses, federal and state agencies (e.g., state departments of transportation), contractors, and individual citizens. Thousands of water quality certifications are granted each year for a wide range of projects.

Stakeholders in this process include:

- Certifying authorities. The state, territory, or Tribe with TAS where the discharge from the proposed federally licensed or permitted project originates, or EPA if a state, territory, or Tribe does not have jurisdiction over the area.
- Federal licensing or permitting agency. The federal agency whose license or permit is subject to section 401 certification.
- Project proponents. Those seeking a section 401 certification, including project applicants and federal agencies seeking certification for the issuance of their general licenses and permits.

The 2023 Rule revises the regulations for water quality certification in 1971, which remained in effect until the 2020 CWA Section 401 Certification Rule (2020 Rule). President Biden's Executive Order to review and, as appropriate and consistent with applicable law, take action to revise or repeal the 2020 Rule. Following this review, the Agency announced its intention to revise the 2020 Rule to better align with the intent of states, territories, and Tribes under section 401. The Agency's rulemaking effort was shaped by stakeholder input.

## Recorded Webinar: Final Rule Overview



Final 2023 CWA Section 401 Water Quality Certification Improvement Rule - Overview Webinar

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## Recorded Webinar: Implementation Considerations



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# Questions?

Please send questions to  
[CWA401@epa.gov](mailto:CWA401@epa.gov)