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Timeframes for Clean Water Act Section 401 Water Quality Certifications/Clarification of Waiver Responsibility: U.S. Army Corps of Engineers Regulatory Guidance Letter No. 19-01

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The United States Army Corps of Engineers ("Corps") issued an August 7th Regulatory Guidance Letter No. 19-02 titled:

Timeframes for Clean Water Act Section 401 Water Quality Certifications and Clarification of Waiver Responsibility ("RGL 19-02")

The Corps states that the purpose of *RGL 19-02* is to clarify timeframes and improve efficiency for receiving Section 401 water quality certification decisions from the certifying agency pursuant to this section of the Clean Water Act by regulations found at 33 C.F.R. 325.2(b)(1). The document is also stated to clarify the Corps' 401 water quality certification waiver determination process and responsibilities when the Corps is not the lead federal agency when multiple federal licenses or permits are needed for a proposed project.

Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedance of water quality standards, or other applicable authorities, of a state. This provision of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharges from the facility will comply with applicable state water quality standards. If not provided, the federal permit or license may not be granted. Further, states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

RGL 19-02 is applicable to both individual and general permits that require a Section 401 water quality certification.

Besides addressing the purpose, applicability and definitions, sections of *RGL 19-02* include:

- Background
- Guidance
- Water Quality Certification Timeframes
- Considerations for Supporting Timeframe Extensions
- Considerations Not Supporting Timeframe Extensions

- Permit Authorizations.
- Clarification of Waiver Responsibility

The Corps uses Regulatory Guidance Letters as a system to organize and track written guidance issued to its field agencies. It states that these documents are normally issued as a result of evolving policy, judicial decisions and changes to the Corps regulations or another agency's regulation which affects the permit program. The Corps considers their use to be limited to interpretation or clarification of existing Regulatory Program policy, but do provide mandatory guidance to the Corps District Offices.

A copy of *RGL 19-02* can be downloaded [here](#).