

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

Federal Permitting: How things have changed at State Permitting Level (and still are)

CHUCK HORBERT, DEPUTY ADMINISTRATOR

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF WATER RESOURCES

State of RI Programs that Intersect with USACE

- RIDEM Freshwater Wetlands Program (CWA Section 404)
- RIDEM WQC Program (CWA Section 401, Rivers & Harbors Act Section 9 & 10)
- CRMC FWW in the Vicinity of the Coast (CWA Section 404)
- CRMC Coastal Permitting (CWA Section 404, Rivers & Harbors Act Section 9 & 10)
- Federal Permitting is handled mostly under the RI General Permit but will be transitioning to the Nationwide Permits

Section 401 WQC for the RI General Permit

- Originally issued 12-6-2023 for fixes to errors in the 2022 RI GP
- Modified WQC issued 9-5-2025 after USACE decided on further modifications after the 12-6-2023 WQC
- Most recent RI General Permit was issued this past November 2025

Section 401 WQC for the RI General Permit

- Waives WQC for activities in non-tidal waters that are exempt from permitting under DEM or CRMC Rules
- If State permit is required, WQC includes condition that the State permit be obtained for the WQC to be valid for the RI GP.
- Includes RI-specific low-flow restriction (July 1-October 31) and TOY restrictions for in-stream work in certain fisheries (no unconfined or sediment-generating activities March 1 through June 30)

Section 401 WQC for the Nationwide Permits

- Issued on 12-15-2025
- Does not require WQC for any of the following:
 - NWP's not proposed to be implemented in New England
 - NWP 8 (Oil & Gas Structures) since it is only applicable seaward of the territorial seas
 - NWP's 1 (Navigation Aids); 10 (Mooring Buoys); 11 (Temp Recreation Structures) or 28 (Maintenance at Existing Marinas) since activities are either exempt or not expected to result in a discharge to WOTUS

Section 401 WQC for the Nationwide Permits

- WQC is Waived for activities in non-tidal waters that are Exempted from permitting under either DEM or CRMC Rules
- Authorized activities granted **conditional WQC** subject to:
 - Compliance with any notification requirements
 - Compliance with all General Conditions and applicable Regional Conditions
 - Must have obtained all applicable State permits

Applicable State Permits may include:

- Freshwater Wetlands Permit (DEM)
- Dam Safety (DEM)
- State WQC (DEM)
- Dredge Permit (DEM/CRMC)
- FWW Wetlands Permit for Freshwater Wetlands in the Vicinity of the Coast (CRMC)
- Assent for activities on the Coast (CRMC)

Applying for RIDEM Permits and/or Section 401 WQC

Rhode Island DEM Office of Water Resource (OWR) Groundwater and Freshwater Wetlands Protection Programs

This secure site is for submitting new and managing existing permits, professional licensing, certifications, and other applications overseen by the DEM's Office Water Resources related to the following programs:

- [OWTS \(Septic\)](#)
- [Freshwater Wetlands](#)
- [Stormwater Construction Permitting](#)
- [Rhode Island Pollutant Discharge Elimination System \(RIPDES\)](#)
- [Construction General Permit \(CGP\)](#)
- [Stormwater Underground Injection Control](#)
- [Water Quality Certification](#)

To apply for other permits, licenses, certifications, or registrations



Log in

WQC has been Denied for:

- NWP 32 (Completed Enforcement Actions)
- NWP 43 (Stormwater Management Facilities) beyond exempted maintenance activities

For those two NWP's, an applicant will need to submit a request for Water Quality Certification under the Section 401 Certification Rules

Speaking of Section 401 Certification Rules

- A new proposed Certification Rule was published in January
- Comments are due in about a week
- No way to speculate on the effect of the changes
- Likely to be subject to litigation by States and NGO's

CWA 401 Regulations Apply to:

- Projects that require licensing through FERC (e.g. Hydropower, Gas Transmission Lines, etc.)
- Projects requiring a CWA Section 404 permit that are **not** already covered by a General Permit (e.g. projects that require an Individual Permit from ACOE under the Rhode Island General Permit) or NWP
- Projects requiring a Federal Permit under Section 9 or 10 of the Rivers and Harbors Act (e.g. new or expanded marinas)
- Bridge projects requiring approval by USCG



QUESTIONS?

