



Massachusetts Department of Environmental Protection  
Bureau of Water Resources – Wetlands and Waterways  
**BRP WW 28 Application for Hydroelectric Power Generation  
Project Certification  
Instructions and Supporting Materials**

---

### ***Application Instructions for BRP WW 28***

This application is not available on eDEP. The following provides general instructions on the form by section.

- Step 1:**       **FERC License Type.** Identify the type of license application for which you seek certification. An original hydropower license authorizes the construction and operation of a project for a term of up to 50 years. A new license, also called a relicense, authorizes the continued operation of an existing (previously licensed) project, and the license term may be 30 to 50 years. An exemption exempts projects from the requirements of Part I of the Federal Power Act (FPA) only (exempted projects are subject to mandatory terms and conditions set by federal and state fish and wildlife agencies and by FERC). FERC also requires applications to amend or surrender a license or exemption. After the license application is filed with and accepted by FERC as complete, FERC will issue and publish notice to seek the public's comments and recommendations. You will need to provide the date(s) FERC issued and published such notice.
- Step 2:**       **Applicant/Owner information.** Provide information about the applicant/owner, including the applicant's/owner's legal name, address and contact information.
- Step 3:**       **Authorized Agent/Representative.** Provide information about the applicant's/owner's authorized agent or representative, including his or her name, address and contact information.
- Step 4:**       **FERC Project Information.** Provide the FERC project name and docket number, project address, and the name(s) of the waterbody impacted by the project.
- Step 5:**       **MEPA Information.** Licenses of this type may require MEPA review. The MEPA regulations establish review thresholds for projects that are of a nature, size, or location likely to cause damage to the environment (directly or indirectly) as identified in the MEPA environmental review thresholds. Review thresholds apply if there is an agency action covering the topic governed by the review threshold. Details on the MEPA review thresholds can be found in 301 CMR 11.03 of the [MEPA Regulations](#). The Massachusetts Department of Environmental Protection (MassDEP) cannot begin technical review of the application until the MEPA process, if applicable, has been completed, unless otherwise agreed to in writing. For questions regarding the applicability of MEPA review or how to file with MEPA, you can contact the MEPA Office at 617-626-1031 or [mepa@mass.gov](mailto:mepa@mass.gov). For useful resources when filing with the MEPA Office please visit <https://www.mass.gov/ready-to-file>.
- Step 6:**       **Documentation.** Typically, the following are required to complete the application:
- The Permit Application Form with the Applicant's Certification
  - The FERC License Application
  - The Public Notice
  - MEPA Certificate or evidence that MEPA is not required
  - Additional study reports not already on file with FERC
- Step 7:**       **Public Notice.** For a § 401 application to be considered complete, the applicant must provide proof of publication of public notice of the application in the Environmental Monitor. Public notice must be published within 10 business days of submitting a § 401 application. A copy of the public notice must be sent to the conservation commissions having jurisdiction over the project site and MassDEP on or before publication. The following language is required:



Massachusetts Department of Environmental Protection  
Bureau of Water Resources – Wetlands and Waterways  
**BRP WW 28 Application for Hydroelectric Power Generation  
Project Certification  
Instructions and Supporting Materials**

---

*Public Notice*

*Pursuant to 33 U.S.C. § 1341 and M.G.L. c. 21 §§ 26 - 53, notice is hereby given of a 401 Water Quality Certification application for [project name, brief description of activity] by [applicant's name and address] on [location] in [city/town] for a [project purpose]. Additional information may be obtained from [contact person's name], [address], [telephone]. Written comments should be sent to Section 401 Program, Massachusetts Department of Environmental Protection, One Winter Street, 5<sup>th</sup> floor, Boston, MA 02108, within 21 days following publication of this notice.*

The *Environmental Monitor* is published twice per month by the Executive Office of Environmental Affairs, MEPA Unit. Filing deadlines are the 15th and last day of the month, unless the day falls on a Saturday, Sunday or holiday, in which case the next business day is used. Publication is 7 to 10 days following the filing deadline. More information is available at: <https://www.mass.gov/service-details/the-environmental-monitor>.

**Step 8:**

**Applicant's Certification.** The applicant, or its agent, must sign the applicant's certification statement in the space provided on the application. For the application to be deemed complete, the applicant is required to take the following actions:

- The application form must be completed and signed.
- Adequate documentation must be provided to support the application.
- Public notice must be published within 10 business days of submitting the completed application form to MassDEP.
- Proof of publication of public notice of the application in the *Environmental Monitor* must be filed with MassDEP and the conservation commission(s) with jurisdiction over the project.
- Send the completed application form and proof of publication to:

Section 401 Program  
Department of Environmental Protection  
One Winter Street, 5<sup>th</sup> floor  
Boston, MA 02108



Massachusetts Department of Environmental Protection  
Bureau of Water Resources – Wetlands and Waterways  
**BRP WW 28 Application for Hydroelectric Power Generation  
Project Certification  
Instructions and Supporting Materials**

---

## *Frequently Asked Questions*

### **1. What is the purpose of these certifications?**

The Federal Energy Regulatory Commission (“FERC”) is an independent federal agency that has authority to license certain non-federal hydroelectric power generation projects in the Commonwealth under the Federal Power Act, 16 U.S.C. §§ 791 to 823d (“FPA”). However, an applicant for a FERC license for a hydroelectric power generation project must also obtain certification (or a waiver of certification) from the host state verifying compliance with the applicable requirements of the federal Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq., and appropriate requirements of state law before FERC can issue a license for the project. Statutory authority for this certification is stated in § 401 of the CWA (33 U.S.C. § 1341) and the Massachusetts Clean Water Act, M.G.L. c. 21, § 27.

### **2. Who must apply?**

Any person who files a license application with FERC for a hydroelectric power generation project that is subject to § 401 of the CWA.

### **3. What requirements should be considered when applying for these certifications?**

Projects requiring § 401 water quality certification are subject to the Massachusetts Water Quality Standards published at 314 CMR 4.00 and other requirements of state law related to water quality and the protection of aquatic flora and fauna. See 33 U.S.C. § 1341(d). MassDEP may consider, as applicable, the Wetlands Protection Act, M.G.L. c. 131, § 40, the Wetlands Protection regulations published at 310 CMR 10.00, the Massachusetts Endangered Species Act, M.G.L. c. 131A, the Massachusetts Endangered Species Act regulations published at 321 CMR 10.00, the regulations for Permits to Take or Possess published at 321 CMR 2.02, the Coldwater Fish Resources regulations published at 321 CMR 5.00, the Wildlife Sanctuaries regulations published at 321 CMR 7.00, the Nature Preserve regulations published at 321 CMR 11.00, the regulations and programs administered by the Massachusetts Office of Coastal Zone Management, and other applicable requirements of state law. During its review of applications for Water Quality Certification, MassDEP will consider these requirements and whether potential adverse impacts on water quality and water resources can be mitigated, and whether feasible alternatives to the proposed project are reasonably available.

**Note:** The foregoing requirements are intended to serve as a guide to the applicant. It does not necessarily include all applicable requirements under state law.

### **4. What are the fees associated with these applications?**

There currently are no application fees or annual compliance assurance fees required.

### **5. How long are these certifications in effect?**

MassDEP’s Water Quality Certifications for hydroelectric generation projects are generally effective for the duration of the federal license, subject to any terms and conditions set forth therein.

### **6. How can I avoid the most common mistakes made in applying for these certifications?**

An applicant for a Water Quality Certification is responsible for providing adequate information to demonstrate compliance with all appropriate requirements of state law. FERC’s study plan process is intended to initiate



**Massachusetts Department of Environmental Protection**  
Bureau of Water Resources – Wetlands and Waterways

**BRP WW 28 Application for Hydroelectric Power Generation**  
**Project Certification**  
**Instructions and Supporting Materials**

---

public involvement early in the project planning process and to encourage citizens, governmental entities, tribes, and other interested parties to identify and resolve issues prior to an application being formally filed with FERC. However, FERC's study plan determinations do not limit any state agency's proper exercise of its independent statutory authority to require additional studies. MassDEP encourages applicants to use FERC's study plan process to develop the data and other information that state fish and wildlife and resource agencies need to complete their respective reviews. A failure to do so could lead to MassDEP's denial of § 401 Water Quality Certification for the project.