



NEW MEXICO ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

Public Involvement Plan (PIP) for the
Clean Water Act Section 401 Certification
of the federal draft NPDES permit for
Westmoreland San Juan Mining LLC
San Juan Coal Mine
Permit No. NM0028746

October 2023
APPROVAL PAGE

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Date

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Date

Public Notice Date: October 28, 2023

I. Public Involvement Plan (PIP) Overview

The New Mexico Environment Department (NMED or Department), Surface Water Quality Bureau (SWQB or Bureau) developed this Public Involvement Plan (PIP) for the State of New Mexico Clean Water Act Section 401 Certification of the draft federal permit for Westmoreland San Juan Mining LLC San Juan Coal Mine National Pollutant Discharge Elimination System (NPDES) permit number NM0028746.

The Bureau encourages the public to learn about and get involved in regulatory decision-making opportunities for the NPDES process. The purpose of this PIP is to provide public participation opportunities and information that may be needed to participate in the Clean Water Act Section 401 Certification process.

This PIP integrates information about the community and identifies resources needed by the Bureau to successfully incorporate community participation activities into the decision-making process for the 401 Certification. The PIP identifies the Department staff and resources needed to accomplish these activities.

The Bureau will meet the public participation requirements for the 401 Certification by following this PIP, which includes all applicable policy, regulatory and statutory public participation requirements.

In developing this PIP, community participation needs were assessed to ensure appropriate promotion of public outreach by identifying whether there is a combination of environmental and demographic factors (i.e., low-income community, minority community, limited English proficiency individuals, linguistically isolated households, etc.) that may impact public participation. These factors are presented in Section IV: Location and Demographics. This assessment identifies community outreach needs and provides for public access opportunities above and beyond statutorily mandated requirements and underscores the importance of adequate public access to information about the Section 401 Certification.

As much as possible, public participation and informational activities related to the 401 Certification will be held within the timelines outlined in the table below. This timeline is tentative and subject to change; activities subject to statutory or regulatory deadlines are noted.

More detailed information about planned Bureau outreach is available in this PIP.

Activity	Dates
Notice PIP (invite public input)	Saturday, October 28, 2023
EPA-NMED Joint Public Notice for the draft NPDES permit for Westmoreland San Juan Mining LLC San Juan Coal Mine, NPDES permit # NM0028746	Saturday, October 28, 2023, through Tuesday, December 12, 2023
Public Notice/Comment Period for the Department's 401 Certification	Saturday, October 28, 2023, through Tuesday, December 12, 2023
Bureau sends 401 Certification to EPA Region 6	Thursday, January 11, 2024

This PIP is a “living” document that may be amended after considering public comments and feedback. The Bureau Chief provides final approval of the PIP and amendments.

II. Bureau Contacts

If you have questions about the State of New Mexico 401 Certification Process, the Bureau’s website, or this PIP, please contact:

Susan A. Lucaskamat, Program Manager
Surface Water Quality Bureau
1190 St. Francis Dr.
Santa Fe, NM 87505
Phone: (505) 946-8924
Fax: (505) 827-0160
Email: susan.lucaskamat@env.nm.gov

Jason Martinez, Permit & Certifications Lead
Surface Water Quality Bureau
1190 St. Francis Dr.
Santa Fe, NM 87505
Phone: 505-372-8376
Fax: (505) 827-0160
Email: jason.martinez2@env.nm.gov

If you need to contact the Bureau regarding the Westmoreland San Juan Mining LLC San Juan Coal Mine or draft NPDES permit number NM0028746, please call or email the Bureau contacts listed above.

A. Non-English Language Speaker Assistance and Accommodations

Non-English speakers may call the Bureau contact listed in this PIP and request language assistance services, such as an interpreter, so they can learn more about the State of New Mexico Section 401 Certification.

B. Department Websites

- New Mexico Environment Department - <https://www.env.nm.gov/>
- New Mexico Environment Department Surface Water Quality Bureau - <https://www.env.nm.gov/surface-water-quality/>
- New Mexico Environment Department Surface Water Quality Bureau Point Source Regulation Section - <https://www.env.nm.gov/surface-water-quality/point-source-regulation-section/>
- New Mexico Environment Department Non-Discrimination and Environmental Justice - <https://www.env.nm.gov/general/environmental-justice-in-new-mexico/>
- New Mexico Environment Department Public Notices - <https://www.env.nm.gov/public-notices/>
- New Mexico Environment Department Public Comment Portal - <https://nmed.commentinput.com/comment/search>
- New Mexico Environment Department Events Calendar - <https://www.env.nm.gov/events-calendar/>

C. 401 Certification Website

The Bureau maintains a website location for information on 401 Certifications at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2018/01/NPDES-401-Certification-List-2021-06-10.pdf>. The website will be kept up to date and has information about the process and important documents. Information on draft NPDES permits that are in the comment period for the Department's 401 Certification can be found at: <https://www.env.nm.gov/public-notices/>.

III. Regulatory Framework

The Environmental Protection Agency (EPA) retains permitting authority for the NPDES Program in New Mexico, and as such, drafts permits for facilities that discharge pollutants into surface waters located in New Mexico. The New Mexico Environment Department's role in NPDES permitting is to ensure that federal permits comply with the requirements of state law, including New Mexico's antidegradation requirements. The Department's permit certification process is outlined in Section 401 of the Clean Water Act, and New Mexico's Administrative Code (NMAC) at 20.6.2.2001 NMAC.

The Bureau has three options in a 401 Certification. If there is an existing state law or regulation (such as water quality standards) that requires more stringent limitations than the federal permit, the Bureau can write a condition for that requirement, and EPA must include the condition in the final permit. However, the Bureau cannot condition a permit to make it less stringent. The second option is that the Bureau can comment on the draft permit based on best professional judgement and on-the-ground knowledge of the facility. EPA will consider but may not incorporate suggestions made in comments into the final permit. Thirdly, the Bureau can deny certification of the permit if it will not comply with the applicable sections of the Clean Water Act and appropriate requirements of state law. This would prohibit EPA from issuing the permit.

The federal requirement for public notice of draft NPDES permits issued by EPA Region 6 is at least a 30-day public review and comment period (40 CFR Part 124.10(b)), and the state requirement for 401 Certification is at least a 30-day public comment period (20.6.2.2001 NMAC). Typically, this is accomplished via a joint public notice issued by EPA, which is posted on EPA's public notice website, accompanying all the draft permit documents. EPA posts draft permits for New Mexico facilities which are on public notice on their website: <https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico>.

Final permits (along with EPA's response to comments) are posted to the EPA's website at: <https://www.epa.gov/npdes-permits/new-mexico-npdes-permits>.

The Bureau does not prepare a draft 401 Certification for the public to review, but accepts comments for consideration in the certification during this public notice period. The Bureau cannot provide a draft document for public review due to stringent federal timelines for permit

issuance – after EPA’s comment period is concluded, the Bureau is required to issue or deny 401 Certification within 45 days from the date that the request to grant certification is received by the Bureau unless circumstances require a longer timeframe (20.6.2.2001.G NMAC). Federal regulations also require that the 401 Certification is received by EPA Region 6 no later than 60 days after the draft permit is mailed unless the Regional Administrator finds that unusual circumstances require a longer time frame (40 CFR Part 124.53(c)(3)). A final copy of the 401 Certification will be sent to EPA Region 6, the applicant and those who submitted comments for consideration in the 401 Certification.

Final NMED 401 Certification letters are posted on the Bureau’s website:

<https://www.env.nm.gov/wp-content/uploads/sites/25/2018/01/NPDES-401-Certification-List-2021-06-10.pdf>.

The public participation requirements of specific water quality programs are specified in 40 CFR Section 25.4 and described in New Mexico’s Statewide Water Quality Management Plan and Continuing Planning Process (WQMP/ CPP¹). At a minimum, the public participation process for New Mexico’s water quality programs consists of the following:

- Providing the public with the information and assistance necessary for meaningful involvement;
- Providing a central location of reports, studies, plans, and other documents;
- Maintaining a list of affected or interested parties and stakeholders; and
- Notifying stakeholders in a timely fashion prior to consideration of major decisions (generally at least 30 days).

The Bureau invites the public to either submit comments on EPA’s draft NPDES permit for Westmoreland San Juan Mining LLC NPDES permit number NM0028746 directly to EPA Region 6 staff in Dallas, Texas. Directions on how to do so are documented on this website:

<https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico>. Comments may be submitted to the Bureau for consideration and inclusion in the 401 Certification. If you would like to comment directly to the Bureau, please send written comments to the Bureau contacts listed above in Section II.

IV. Location and Demographics

The Westmoreland San Juan Mining LLC San Juan Coal Mine is located in Waterflow, San Juan County, New Mexico.

Demographic Summary

Demographic indicators were obtained from EPA EJSCREEN, an environmental justice screening and mapping tool, available on-line at <https://www.epa.gov/ejscreen>. EJSCREEN is based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and reports. Users choose the geographic area of interest by indicating a point, line or polygon on the map; users may also choose to select a “buffer” area (up to 10

¹ <https://www.env.nm.gov/surface-water-quality/wqmp-cpp/>

miles) around the point, line or polygon to better capture the affected community. EJSCREEN then provides a report that describes demographic and environmental information for that area, with or without an assigned buffer. The 2017-2021 American Community Survey (ACS) Report link in EJSCREEN provides a report with U.S. Census Bureau American Community Survey (ACS) data in PDF format. The 2017-2021 ACS, through EJSCREEN, provided quantitative information regarding demographic indicators.

Summary of Site-Specific EJSCREEN Inputs

- Community of Concern = Waterflow, San Juan County, New Mexico
- Buffer = 3-mile buffer, encompasses the facility and all discharge points/outfalls.

The 2017-2021 ACS Report indicates that the total population of the area-of-interest for the Westmoreland San Juan Mining LLC San Juan Coal Mine near Waterflow, New Mexico is 358: 30 percent of the community identifies as white, 63 percent identifies as American Indian, 1 percent identifies as Asian, 5 percent identifies as some other race, and 2 percent identifies as multi-racial. Of the total population, 8 percent identify as Hispanic. The percent of persons that communicate in a language other than English (non-English) at home is 36 percent (119 individuals), with 38 individuals speaking English “less than very well.” The per capita income for the Waterflow, NM area for 2017-2021 is \$25,526, as compared to the national per capita income for 2017-2021 of \$37,638. From the Bureau’s EJScreen analysis, there are 3 linguistically isolated households in this community. These results indicate that the percentage of non-English-speaking communication in this community is noteworthy and various demographic factors (i.e. low-income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, etc.) may impact public participation.

V. Public Participation & Outreach Activities

The public may ask questions about NPDES permits at any time. Interested community members do not need to wait for a formal public comment period to contact the Bureau. However, the Bureau emphasizes that to be included in the administrative record, comments solicited by public notices about the draft permit must be submitted during the noticed comment periods, and in accordance with the public notice and 20.6.2.2001 NMAC.

Specific outreach activities related to this draft NPDES permit and the Bureau’s 401 Certification process include:

- Maintaining a specific Department public notice web page (<https://www.env.nm.gov/public-notices/>) with attachments and links to EPA’s draft permit documents (found at <https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico>) and EPA’s final permit (found at <https://www.epa.gov/npdes-permits/new-mexico-mpdes-permits>),
- Creating and maintaining a specific archive webpage with the final 401 Certification letters sent to EPA Region 6 (<https://www.env.nm.gov/wp-content/uploads/sites/25/2018/01/NPDES-401-Certification-List-2021-06-10.pdf>),

- Developing a public notice announcing the opening of the 30-day (or more, if applicable) public comment period (joint notice with EPA Region 6),
- Posting this public notice to the Department’s event calendar (<https://www.env.nm.gov/events-calendar/>),
- Emailing this public notice to Bureau’s email list through the GovDelivery e-mail delivery service (1,954 email addresses as of July 2022), and
- Listing the public notice on the NMED Public Comment Portal (<https://nmed.commentinput.com/comment/search>) with attachments and links to EPA’s draft permit documents (found at <https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico>).

Copies of the draft permit and any supporting documents may be obtained via download from the EPA Region 6 website during the comment period at <https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico>, or by contacting Susan A. LucasKamat at (505) 946-8924, susan.lucaskamat@env.nm.gov, NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87505.

The most direct way to learn about and be involved in the decision-making process for draft NPDES permits is to comment on the federal permit directly to EPA. Relevant comments may also be submitted to the Bureau for the 401 Certification through the NMED Public Comment Portal (<https://nmed.commentinput.com/comment/search>). As stated in Section III above, the Bureau can only mandate changes to the draft permit if based on state law; however, EPA does consider the Bureau’s comments based on best professional judgement. Additionally, the public may request to review documents at the Bureau or one of the information repositories listed below.

Based on the demographics report discussed in the PIP, the Bureau’s assessment does not indicate that additional language assistance (interpretation or translation services) or outreach are needed for this activity, at this time. Basic information about public involvement opportunities will be in English and will include information on how to request materials in another language or to speak with Bureau staff through an interpreter. The Bureau has determined that there are adequate resources available within the Department to provide LEP services, if requested or determined necessary. Further details about public participation for this activity are outlined below.

A. Postal Mailing or E-Mailing of Notices to Persons on the Surface Water Quality Bureau’s Email List

The Bureau maintains an email list (1,981 email addresses as of August 2023) that includes individuals interested in surface water quality issues and activities. This list is a combination of all previously interested persons who requested the Bureau provide them with information about surface water quality in New Mexico. The Bureau regularly maintains contact information, which is updated or supplemented, if additional

information is found. Interested persons providing both an address and email may receive physical mail and an email. Additional individuals, organizations, and other interested parties are added to the email list as requested.

B. Email Updates

If you would like to be added to the Bureau's email list for information and updates, visit the Bureau's website at: <https://www.env.nm.gov/surface-water-quality/> and click on the "Click here to subscribe to receive email updates" button on the bottom of the home page. For help, you can contact the Bureau's website liaison, Heidi Henderson at 505-819-9986 or email heidi.henderson@state.nm.us.

C. Notices in the State Newspaper and Local Newspapers

There is a state requirement for public notices related to NMED's 401 Certification to be published in state or local newspapers. EPA publishes notice of draft NPDES permits in a newspaper with local distribution in the permit area.

D. Public Meeting Notices, Public Comment Notices, and Other Notices

Based on the Bureau's evaluation of the community, notices will be in English. In addition, the Bureau may post notices on the Department's Events Calendar at: <https://www.env.nm.gov/events-calendar/>.

E. Informational Pamphlets

The Bureau does not develop informational pamphlets for draft permits. Generally, information about how EPA's permit was developed or has changed is documented in the fact sheet or statement of basis accompanying the draft permit, which is located along with the draft permit itself on EPA's public notice website.

F. Public Comment Period

The 45-day public comment period to EPA Region 6 on the draft Westmoreland San Juan Mining LLC San Juan San Juan Mine NM0028746 is planned to start Saturday, October 28, 2023, and end Tuesday, December 12, 2023, at 5:00 p.m. (CST). The 45-day comment period to the Bureau for consideration in the Clean Water Act Section 401 Certification of the draft NPDES permit for Westmoreland San Juan Mining LLC NM0028746 is planned to start on Saturday, October 28, 2023 and end on Wednesday, December 12, 2023, at 5:00 p.m. (MST).

G. Other Outreach

Currently the Bureau is not using other means of outreach such as flyers or other hard copy postings. However, any updates will be posted on the Department's website.

H. Information Repositories

Copies of the draft NPDES permit and any of the above-mentioned supporting documents may be obtained via download from EPA Region 6's website at <https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico> or by contacting Susan A. LucasKamat at (505) 946-8924, susan.lucaskamat@env.nm.gov, NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87505.

The Bureau is not providing hardcopies and other information at post offices, community centers, public libraries, or other repositories. If you would like to request hard copies of important documents and information about how to comment on the draft permit, please contact Susan A. LucasKamat at (505) 946-8924 or susan.lucaskamat@env.nm.gov.

I. 401 Certification Proceedings, Outcomes and Responses to Comments

The Bureau considers public comments received prior to the close of the public comment period in its Clean Water Act Section 401 Certification of the draft permit. The final 401 Certification will be sent to EPA Region 6, the permit applicant and the interested stakeholder and/or community members who commented directly to the Bureau. The final 401 Certification will be available to the public via download from the Bureau's website at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2018/01/NPDES-401-Certification-List-2021-06-10.pdf>.

3-mile buffer around the Westmoreland San Juan Mining LLC San Juan Coal Mine (NM0028746)

