



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

Regulatory Branch

June 18, 2025

Shelly Lemon
New Mexico Environmental Department (NMED)
1190 Saint Frances Drive, PO Box 5469
Santa Fe, NM 87502-5469
shelly.lemon@env.nm.gov

Reference: 2026 Nationwide Permits
401 Water Quality Certification
(Request for Certification)

Dear Ms. Lemon:

The U.S. Army Corps of Engineers (Corps) is preparing to reissue its existing Nationwide Permits (NWP) and associated general conditions and definitions. The proposed rule for reissuing the NWP was published in the Federal Register June 18, 2025. The Corps is proposing to reissue most of the NWP without changes. The NWP Federal Register Notice (FRN) is located at:
<https://www.federalregister.gov/documents/2025/06/18/2025-11190/proposal-to-reissue-and-modify-nationwide-permits>.

Under Section 401 of the Clean Water Act (CWA), an activity which may result in a discharge into waters of the U.S. that is authorized by a Federal permit must receive a CWA Section 401 Water Quality Certification (WQC), or waiver, from the appropriate certifying authority. This process allows the certifying authority an opportunity to ensure that any discharge will comply with applicable water quality requirements.

In accordance with 40 CFR 121.5, this letter and its attachments serve as the request for certification. As required in 40 CFR 121.5(a)(2) the FRN includes readily available water quality-related materials that informed the development of the NWP.

Information required in a certification request to the certifying authority, as defined at 40 CFR 121.5(d), is in the FRN, except for 40 CFR 121.5(b)(7) documentation that a pre-filing meeting request was submitted. The Corps submitted the pre-filing meeting request to the certifying authority office on May 2, 2025, as shown in the attachment.

The date of this letter serves as the date on which the reasonable period of time begins running. The reasonable period of time for certifying authorities to act on the proposed NWP's reissuance is six months, in accordance with 40 CFR 121.6. This provides a consistent reasonable period of time for all certifying authorities. The reasonable period of time ends on December 18, 2025. Certifying authorities can act on the certification request for the proposed NWP's in less time if they choose to do so.

The proposed categories of activities to be authorized by the NWP's for which certification is requested are described in the text of the proposed NWP's. Nationwide permits numbered 15, 16, 17, 18, 21, 25, 29, 30, 34, 39, 40, 41, 42, 43, 46, 49, 50, and 59 would authorize activities that may result in discharges and therefore 401 water quality certification is required for those NWP's. Nationwide permits numbered 3, 4, 5, 6, 7, 12, 13, 14, 19, 20, 22, 23, 27, 31, 32, 33, 36, 37, 38, 44, 45, 48, 51, 52, 53, 54, 57, 58, and A would authorize various activities, some of which may result in a discharge and require 401 water quality certification, and others which may not. In the opinion of the Corps, Nationwide permits numbered 1, 2, 9, 10, 11, 24, 28, 35, and 55 could not reasonably be expected to result in a discharge into waters of the United States and we do not deem certification to be necessary for this group of NWP's. However, the final decision of whether certification is needed for any of these nine types of activities rests with the certifying authority. Additionally, NWP 8 only authorizes activities seaward of the territorial seas and therefore does not require water quality certification.

In order to assist you in your decision making, we've attached a spreadsheet that shows all of the NWP's issued over the past five years within the State of New Mexico.

The Albuquerque District is proposing regional conditions for the proposed NWP's. Enclosed is a copy of the Albuquerque District's public notice inviting public comment on the proposed regional conditions.

We note that the Environmental Protection Agency regulations implementing Section 401 have changed since the Corps last requested water quality certification for the reissuance of the NWP's in 2020. While the new regulations at 40 CFR 121 allow for the modification of a grant of certification upon the mutual agreement of the certifying authority and the Corps, conditions or other language that reserve the unilateral right of the certifying authority to modify or retract a certification are not allowed and may result in the Corps declining to rely on blanket certifications that contain such language.

In accordance with the Corps' regulations at 33 CFR 330.4(c), if you deny water quality certification for certain activities authorized by the proposed NWP's within the State of New Mexico, then the Corps will deny without prejudice authorization for those activities. Anyone wanting to perform such activities must first obtain an activity-specific water quality certification or waiver thereof from your office before proceeding under the NWP.

Thank you for your attention regarding this matter. The Corps looks forward to working with NMED throughout the water quality certification process for the proposed NWP's. If you have any questions regarding this request, please feel free to contact Forrest Luna by telephone at (505) 382-0071 or by email at: Forrest.Luna@usace.army.mil.

Sincerely,

Christina Schroeder, Corps of Engineers
Acting Regulatory Division Chief

Enclosures:

2026 NWP 401 WQC pre-filing meeting request
2026 Nationwide Permits Proposal Summary Chart
Excel Spreadsheet for NWP's Issued in Albuquerque District
Proposed 2026 NWP's Estimated Annual Use
Albuquerque District Public Notice for 2026 NWP's and Regional Conditions

cc:

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