

How to obtain a Clean Water Act §404 permit and §401 water quality certification

Start by contacting the U.S. Army Corps of Engineers (Corps) Albuquerque District (<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>). The Corps generally issues three kinds of permits in New Mexico: Nationwide Permits (NWP), Regional General Permit (RGP), and Standard Individual Permits (IP). The correct water quality certification (WQC) will depend upon the type of permit.

The 2020 Clean Water Act §401 Certification Rule, codified at 40 C.F.R. 121, requires project proponents to submit a pre-filing meeting request (§121.4) with the SWQB at least 30 days prior to submitting a certification request (§121.5). More information about the 401 Rule can be found at the U.S. Environmental Protection Agency's website (<https://www.epa.gov/cwa-401/final-rule-clean-water-act-section-401-certification-rule>). Projects requiring an Individual Water Quality Certification or an Expedited Individual Water Quality Certification for one of the 13 NWPs (NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57, and 58) must submit a pre-filing meeting request and certification request.

For IPs, submit an ENG FORM 4345 application to both the Corps and the New Mexico Environment Department-Surface Water Quality Bureau (SWQB). State regulations at 20.6.2.2002 New Mexico Administrative Code require a 30-day public comment period. The SWQB will evaluate the application materials and other information and will typically issue an individual (WQC) with conditions necessary to protect water quality. *Project proponents must follow all conditions within the Corps' permit and the individual WQC.*

The three RGPs in New Mexico (RGP 16-01, NM-14-01, and NM/West TX-17-01) each have their own specific WQC. For more information about these RGPs and to view the associated WQCs, please visit the Corps' website at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/RGP/>.

The Corps most commonly issues NWPs which cover a range of activities that have no more than minimal adverse environmental effects. *Activities that fall under a NWP must comply with all of the Corps' General Conditions and the WQC Conditions.* The SWQB has two separate WQCs for the 2021 NWPs. One WQC is for the 41 NWPs and the other WQC is for the 13 NWPs. **The WQC for the 41 NWPs requires project proponents to submit a copy of the Pre-Construction Notification (PCN) to the SWQB when a PCN is required by the Corps.** A pre-filing meeting and certification request is not required for projects covered by one of the 41 NWPs. The certification process for the 13 NWPs relies on an expedited individual WQC template. Project proponents for one of the 13 NWPs must submit a pre-file meeting request and certification request to the SWQB before the SWQB can determine if the project is eligible for the expedited certification template. If the SWQB determines that the expedited certification is appropriate for a project, the SWQB will fill out the expedited certification template and issue the certification directly to the project proponent.

The SWQB denies certification for (1) all NWPs in Outstanding National Resource Waters (ONRWs) *except* NWP-27 Aquatic Habitat Restoration, (2) sediment releases from reservoirs under NWP-27, (3) bank stabilization projects under NWP-13 that use concrete, soil cement, or other materials to line channels either partially or wholly with impervious surfaces (4) specific NWPs under the 13 NWPs that impact more than 300 linear feet without including efforts to mitigate impacts, and (5) stormwater management facilities that are constructed "on-line" or located directly within a watercourse. For a full description of the denials, rationale, and justification, please refer to the WQC for the appropriate type of permit.

Please contact the SWQB for any questions. A link to the SWQB's "401 Contact Map", WQCs, and additional information is available at <https://www.env.nm.gov/surface-water-quality/dredgeandfillactivities/>.