



December 15, 2025

Christina Schroeder
Chief, Regulatory Division
U.S. Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, New Mexico 87109-3434
Christina.L.Schroeder@usace.army.mil

Re: Clean Water Act Section 401 Water Quality Certification for the State of New Mexico and the United States Army Corps of Engineers 2026 Nationwide Permits

Dear Christina Schroeder,

The Cabinet Secretary of the New Mexico Environment Department (NMED) delegated signatory authority, in the June 23, 2025, Delegation Order, for state certifications of federal Clean Water Act (CWA) permits to the Surface Water Quality Bureau (SWQB) Chief. Under Section 401 of the CWA, a federal agency may not issue a permit that may result in the discharge into waters of the United States unless a CWA Section 401 Water Quality Certification (Certification) is issued or waived by the certifying authority. NMED received the United States Army Corps of Engineers (USACE) Albuquerque District's pre-filing meeting request on May 2, 2025, and certification request on June 18, 2025, pursuant to 40 CFR §§ 121.4 & 121.5. NMED met with the USACE on June 12, 2025, and examined the USACE June 18, 2025 proposal to reissue and modify the proposed Nationwide Permits (NWPs) under Section 404 of the CWA and Section 10 of the Harbors and Rivers Act to authorize only activities with no more than minimal individual or cumulative adverse environmental effects (see 90 FR 26100).

Pursuant to State of New Mexico (State) regulations for permit Certification at 20.6.2.2002 New Mexico Administrative Code (NMAC), NMED issued a public notice of this activity and announced a public comment period, published in the *Albuquerque Journal* and posted on NMED's website (<https://www.env.nm.gov/public-notices/>) on October 17, 2025. The public comment period ended on November 17, 2025. NMED did not receive any comments.

Applicable Water Quality Regulations:

New Mexico's water quality regulations and standards, codified under 20.6.2 NMAC and 20.6.4 NMAC, were adopted by the New Mexico Water Quality Control Commission pursuant to the authority provided in the New Mexico Water Quality Act, NMSA 1978, Section 74-6-4, and promulgated in accordance with the New Mexico State Rules Act, NMSA 1978, Sections 14-4-1 through -11. For projects that discharge dredged or fill material into waters of the United States (WOTUS), which by definition are also surface waters of the state (20.6.4.7(S)(5)(b) NMAC), NMED relies on conditions included in the Certification to ensure compliance with State water quality regulations and standards at 20.6.2 NMAC and 20.6.4 NMAC, the State Water Quality Management Plan and Continuing Planning Process (WQMP/CPP), Total Maximum Daily Loads (TMDLs), and the State's Antidegradation Policy. Certification is also required to comply with General Condition 25 (Water Quality) and General Condition 27 (Regional and Case-By- Case Conditions) of the NWPs.

Upon inclusion of NMED's Certification conditions and denials in the final NWPs, NMED hereby certifies that the permitted activities will comply with applicable provisions of the CWA Sections 301, 302, 303, 306, and 307, and with appropriate requirements of State law, including the New Mexico Water Quality

Act (NMSA 1978, Sections 74-6-1 through -17), Ground and Surface Water Protection regulations under 20.6.2 NMAC, and the Standards for Interstate and Intrastate Surface Waters under 20.6.4 NMAC. Projects that are unable to comply with this Certification are denied Certification without prejudice and the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC. The conditional Certification and denials for the Nationwide Permits are attached.

Sincerely,

Shelly Lemon, Chief
Surface Water Quality Bureau

cc: Troy Hill, Director, Water Division, USEPA Region 6 (Hill.Troy@epa.gov)
Daniel Landeros, Water Division, USEPA Region 6 (Landeros.Daniel@epa.gov)
Debra Hill, Large River Restoration Branch Supervisor, NM Ecological Services Field Office, U.S. Fish and Wildlife Service (Debra_Hill@fws.gov)
Virginia "Ginny" Seamster, Assistant Chief for Technical Guidance, New Mexico Department of Game and Fish (Virginia.Seamster@dfg.nm.gov)
Jonas Armstrong, Water Protection Division Director, NMED (Jonas.Armstrong2@env.nm.gov)
Kate Lacey-Younge, Watershed Protection Program Manager, SWQB-NMED (Kathryn.Lacey@env.nm.gov)
Alan Klatt, Implementation & Restoration Team Supervisor, SWQB-NMED (Alan.Klatt@env.nm.gov)

**State of New Mexico
CWA Section 401 Certification Conditions on the
2026 Nationwide Permits (NWPs)**

General Conditions of Certification:

The following conditions apply to all uses of the Nationwide Permits (NWPs) within the State of New Mexico Clean Water Act (CWA) Section 401 area or region of certification authority.

General Condition 1. Pre-Construction Notification

When the USACE requires a Pre-Construction Notification (PCN), submitted by itself or through the Regulatory Request System (RRS) application¹, the Project Proponent shall submit a copy of the PCN to NMED as follows:

wpsprogram.manager@state.nm.us

Watershed Protection Program Manager, Surface Water Quality Bureau, NMED

Or mailed to (**email is preferred**):

Program Manager, Watershed Protection Section

Surface Water Quality Bureau

PO BOX 5469

Santa Fe, NM 87502

This condition is necessary to assure that the activity will comply with water quality requirements, because it supports compliance with the water quality requirements included in this Certification.

General Condition 2. Inspection

The Project Proponent must notify NMED at least 10 business days before starting construction to allow time to schedule monitoring or an inspection. Notification must include a list of Best Management Practices (BMPs) selected for the project as required by the following conditions 3, 4, and 5.

This condition is necessary to assure that the activity will comply with water quality requirements, because it supports compliance with the water quality requirements included in this Certification.

General Condition 3. Impaired Water Bodies

If the proposed activity is located at a water body that is listed as impaired under Section 303(d) of the CWA, the Project Proponent shall select and implement specific measures or BMPs to prevent further degradation to water quality. The current U.S. Environmental Protection Agency (EPA)-approved New Mexico list of impaired waters is available at <https://www.env.nm.gov/surface-water-quality/303d-305b/>. See the most current summary spreadsheet "All Impairments (Category 4 or 5)" or a Project Proponent can contact NMED's Surface Water Quality Bureau if they have any questions or need assistance. NMED's online mapper (<https://gis.web.env.nm.gov/oem/?map=swqb>) can be used to assist in identifying if a project is located at an impaired water body by turning on the most current and final "Impaired Waters" layer. For any discrepancies, the "All Impairments (Category 4 or 5)" spreadsheet is part of the official record.

This condition is necessary to assure that the activity will comply with water quality requirements, because impaired water bodies are protected as Tier 1 waters under New Mexico's Antidegradation Policy and Implementation Procedure for which "no further degradation is permitted."

¹ The Project Proponent can access, view, and download a copy of their PCN using the RRS Dashboard and "PDF" button.

General Condition 4. Construction Best Management Practices (BMPs)

Project Proponents shall select and implement all practicable and reasonable BMPs that are appropriate for their project. Practicable and reasonable BMPs for New Mexico surface waters include, but are not limited to:

Scheduling – Project activities must avoid times of predictable flooding to avoid working in high water (seasonal monsoons, snowmelt, or releases from dams).

Crossings – Limit stream and wetland crossings to a single, narrow location that is perpendicular to the stream (or along a contour of a wetland).

Diversions – Flowing water that is diverted around the work area must remain within the existing channel and provide for aquatic life movement. Diversions must be non-erodible, such as sandbags, water bladders, concrete barriers, channel bypass pipe, or conveyance lined with geotextile or durable plastic sheeting. Unlined dirt cofferdams and trenches are not acceptable diversion structures.

Heavy equipment –

- Pressure wash and/or steam clean before the start of the project and inspect daily for leaks (to remove contaminants and to avoid introducing invasive species).
- Complete a written log of inspections and maintenance throughout the project period.
- Do not use leaking equipment in or near surface water(s).
- Do not park or leave equipment stored within the stream channel, floodplain or wetland.
- Operate heavy equipment from the streambank or work platforms to avoid operating heavy equipment in flowing water whenever possible. Use biodegradable hydraulic fluid if heavy equipment must be operated in flowing water.

Fuel –

- Store fuel, oil, hydraulic fluid, lubricants, and other petrochemicals outside of the 100-year floodplain within a secondary containment system capable of containing twice the volume of the product.
- Refuel equipment at least 100 feet from surface water.

Construction materials –

- Use appropriate fill material – broken concrete, tires, tire bales, treated lumber, and other refuse material shall not be used as fill material.
- Properly handle and contain all asphalt, concrete, drilling fluids, and other construction materials to prevent releases to surface water. Fully contain poured concrete in mortar-tight forms and/or placed behind non-erodible cofferdams to prevent contact with surface or groundwaters. Use appropriate containment measures to prevent wastewater from concrete batching, vehicle and equipment wash-down, or aggregate processing from impacting surface waters and aquatic resources.
- Remove construction materials from the channel at the end of each workday.

Demolition, repair, and cleaning activities – Keep materials associated with demolition, repair, and cleaning activities of bridges or associated structures out of the channel. Generally, secure impermeable containment material (e.g., durable plastic sheet, canvas, tarpaulins or other catchment devices) under the structure to capture falling debris. Include vacuum systems in sandblasting operations or completely bag the structures to collect all paint and concrete debris. Properly dispose of any debris that falls onto the containment area or channel in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC). Maintain applicable Safety Data Sheets of water repellants and surface finish treatments at the project area and follow safety procedures for use of such products near open water.

Trenching –

- Backfill and compact excavated trenches to match the adjacent undisturbed soil and topography.
- Excavated trenches shall not be used or result in the draining any surface water including wetlands.

- Excavated trenches shall include escape ramps for wildlife.
- Use planning and construction practices to minimize the length and duration of open trenches.

Dewatering discharges – Dewatering discharges shall not contain contaminants, including excessive turbidity and other contaminants associated with the discharge, in concentrations that exceed surface water or groundwater standards at 20.6.4 NMAC and 20.6.2 NMAC. Appropriate dewatering BMPs include discharging to a sediment basin within an uplands area behind a vegetative buffer, using fabric, biobag, or hay-bale corrals, or using geotextile filter bags.

Dust control – Water used in dust suppression shall not contain contaminants in concentrations that exceed surface water or groundwater standards at 20.6.4 NMAC and 20.6.2 NMAC.

Erosion control (during construction) –

- Avoid disturbance to vegetation, minimize bare ground, and minimize disturbance to bare ground.
- Establish and maintain upland buffers between upland construction and all surface waters, including streams, arroyos and wetlands.
- Employ silt fences, seed-free straw mulch, hydro-mulch, biodegradable straw wattles, erosion control fabrics and other techniques, as appropriate, to protect waters from sedimentation and other pollutants.
- Avoid using jute netting or placing woven wire in contact with the stream. These materials have been known to trap and kill fish and wildlife.

Wetlands –

- Avoid working in wetlands whenever possible.
- Flag or otherwise mark wetland boundaries so construction crews can avoid them.
- Avoid working in wetlands when soils are too saturated to support heavy machinery.
- Use wide tires, tracks, geotextile, swamp mats, or wooden mats to disperse weight and minimize soil compaction when heavy machinery is required.
- Use the smallest machinery that can handle the job – preferably non-mechanized equipment.
- Avoid turning wheels when the vehicle is stationary to prevent digging and damage to vegetation.
- Avoid permanent impacts to wetlands such as draining, filling, or other hydro-modifications.
- Install permeable fills to allow natural seepage flows.
- Minimize wetland impacts by stockpiling vegetation and hydric soils to be reused during post-construction stabilization.

Post-construction stabilization –

- The Project Proponent and their contractors shall take necessary steps to minimize channel and bank erosion during and after construction. Where applicable, banks must be reseeded or replanted with native vegetation.
- Reseed or plant with native vegetation any disturbed areas outside stream channels that are not otherwise physically protected from erosion so that species regrowth is functionally equivalent to the pre-disturbed site or a reference site. Stabilization measures, including revegetation, are required at the earliest practicable date. Use native woody riparian and/or wetland species in areas that support such vegetation. Maintain temporary stabilization measures, such as silt fences and straw wattles, until permanent stabilization is achieved.

This condition is necessary to assure that the activity will comply with water quality requirements, because New Mexico's Antidegradation Policy and Implementation Procedure describes the primary tool for limiting the discharge of pollutants from dredge and fill activities authorized under CWA Section 404 is through certification conditions mandating the installation and operation of BMPs that prevent pollutant transport to a watercourse and thereby, degradation. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; toxic pollutants; and biological integrity (20.6.4 NMAC).

General Condition 5. Low Impact Development

If the proposed dredge and fill activity increases the area of impervious surfaces, the Project Proponent shall select and implement low impact development practices (e.g. native landscaping, green stormwater infrastructure, and constructed green spaces) to the extent practicable to minimize and mitigate water quality impacts. More information about low impact development is available at:

<https://www.epa.gov/nps/urban-runoff-low-impact-development>.

This condition is necessary to assure that the activity will comply with water quality requirements, because New Mexico's Total Maximum Daily Loads identify urban runoff, land development, residences/buildings, and pavement/impervious surfaces as probable sources of water quality impairments. Low impact development plays an important role in minimizing and mitigating individual and cumulative adverse environmental effects. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; toxic pollutants; and biological integrity (20.6.4 NMAC).

General Condition 6. Spills

Appropriate spill clean-up materials such as absorbent pads and spill booms must be available on-site at all times during construction. The Project Proponent shall report all spills immediately to NMED as required by the New Mexico Water Quality Control Commission Regulations (20.6.2.1203 NMAC). For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535. For emergencies only, call 505-827-9329 twenty-four hours a day (New Mexico Department of Public Safety). For spills that reach a surface water of the state, including ephemeral streams, also report via email at SWQ.reporting@env.nm.gov.

This condition is necessary to assure that the activity will comply with water quality requirements, because spill clean-up materials and timely spill reporting ensures compliance with all water quality requirements in the event of a spill of toxic pollutants or other water contaminants.

General Condition 7. Posting

The Project Proponent shall provide all contractors and subcontractors a copy of this Certification and make all contractors and subcontractors aware of the Certification conditions prior to initial operation. A copy of this Certification must be kept at the project site during all phases of construction.

This condition is necessary to assure that the activity will comply with water quality requirements, because providing all contractors and subcontractors with the terms and conditions of this Certification will help prevent noncompliance with the State water quality regulations by supporting adequate training and working procedures.

General Condition 8. Certification of Compliance

Upon project completion, the Project Proponent shall provide NMED a copy of the form "Certification of Compliance with Department of the Army Nationwide Permit" when this form is submitted to the USACE.

This condition is necessary to assure that the activity will comply with water quality requirements, because it supports compliance with the water quality requirements included in this Certification.

Specific Conditions for Nationwide Permits:

Subject to inclusion of the General Conditions above, NMED certifies the following NWPs without permit-specific conditions or permit-specific denials: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 16, 17, 18, 19, 20, 22, 23, 25, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46, 49, 50, 51, 52, 53, 57, 58, 59, and NWP A.

Specific Condition for NWP 14-Linear Transportation Projects –

NMED certifies this NWP subject to inclusion of the General Conditions above and with the following permit-specific conditions: Structures and culverts at stream crossings must allow for the passage of sediment, bedload, woody debris, aquatic life, and prevent erosion problems such as headcuts, incision, bank erosion, and the diversion of the stream from its natural channel during flood events. The Project Proponent shall consider options that minimize disturbance and allow for uninterrupted flow such as low water crossings instead of culverts (for low standard rural roads), bottomless arch culverts, and spans that preserve bankfull geometry, depending on site characteristics and level of service needs.

This condition is necessary to assure that the activity will comply with water quality requirements, because structures that do not support the passage of aquatic life, sediment, and woody debris or accelerate erosion may adversely affect the chemical, physical, and biological integrity of surface waters. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; and biological integrity (20.6.4 NMAC).

Specific Condition for NWP 21-Surface Coal Mining Activities –

NMED certifies this NWP subject to inclusion of the General Conditions above and with the following permit-specific conditions: Projects shall not alter the channel form or function (e.g. channel aggradation, degradation, channel width, sinuosity, etc.). Projects must allow for the passage of sediment, bedload, woody debris, and aquatic life.

This condition is necessary to assure that the activity will comply with water quality requirements, because activities that alter channel form and channel function may adversely affect the chemical, physical, and biological integrity of surface waters. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; and biological integrity (20.6.4 NMAC).

Specific Condition for NWP 44-Mining Activities –

NMED certifies this NWP subject to inclusion of the General Conditions above and with the following permit specific conditions: Projects shall not alter channel form or function (e.g. channel aggradation, degradation, channel width, sinuosity, etc.). Projects must allow for the passage of sediment, bedload, woody debris, and aquatic life.

This condition is necessary to assure that the activity will comply with water quality requirements, because activities that alter channel form and channel function may adversely affect the chemical, physical and biological integrity of surface waters. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; toxic pollutants; and biological integrity (20.6.4 NMAC).

Specific Denials of Specific Nationwide Permits:**Specific Denial for NWP-13 Bank Stabilization –**

NMED denies Certification for bank stabilization projects that use concrete, soil cement, or other materials to line channels with impervious surfaces. In these cases, the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC. NMED strongly recommends that all bank stabilization projects involve either the sole use of native vegetation to protect water bodies from solar radiation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.) or, alternatively, a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques.

There is insufficient information for NMED to preemptively certify bank stabilization projects that line channels with impervious surfaces, because such projects may individually or cumulatively result in more

than minimal adverse environmental effects to the chemical, physical, and biological integrity of surface waters. Missing information includes how such projects will maintain and support surface water quality. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; and biological integrity (20.6.4 NMAC).

Specific Denial for NWP-27 Aquatic Ecosystem Restoration, Establishment, and Enhancement Activities –
NMED denies Certification for sediment releases from reservoirs.

There is insufficient information for NMED to preemptively certify sediment releases from reservoirs. Missing information includes sediment analysis, downstream site assessment, sediment transport rates, water quality monitoring plan, and long-term sediment management strategy. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; and biological integrity (20.6.4 NMAC).

Specific Denial for NWP 43-Stormwater Management Facilities –

NMED denies certification for NWP-43 for stormwater management facilities that are constructed “on-line” (i.e., located directly within a natural watercourse).

There is insufficient information for NMED to preemptively certify stormwater management facilities located within channels, because such projects may individually or cumulatively result in more than minimal adverse environmental effects to the chemical, physical, and biological integrity of surface waters. Missing information includes how such projects will maintain and support surface water quality. Capturing stormwater and stormwater contaminants close to the source and before reaching a natural watercourse is strongly recommended. Specific water quality requirements include, but are not limited to, bottom deposits and suspended or settleable solids; floating solids, oil and grease; temperature; turbidity; total dissolved solids; toxic pollutants; and biological integrity (20.6.4 NMAC).

Specific Denial for Outstanding National Resource Waters –

For proposed activities in Outstanding National Resource Waters (ONRWs) listed under 20.6.4.9(D) NMAC, NMED denies Certification of all NWP_s except NWP-27. For all other activities located within ONRWs, the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC. NMED’s online mapper (<https://gis.web.env.nm.gov/oem/?map=swqb>) and the “Outstanding National Resource Waters” layer may be used as a preliminary assessment to identify if a project is located in an ONRW. For any discrepancies, the written description under 20.6.4.9(D) NMAC is part of the official record.

There is insufficient information for NMED to preemptively certify projects in ONRWs. ONRWs are protected as Tier 3 waters, which do not allow for long-term degradation and require a determination by the Water Quality Control Commission (20.6.4.8(A)(3) NMAC). Missing information includes the requirements at 20.6.4.8(A)(3) NMAC.

Comments that are not Conditions of Certification:

Other permits that may be required in addition to CWA Section 404 permits –

- Dewatering discharges may be subject to NMED Discharge Permits. Regulations for ground and surface water protection at 20.6.2.1201 NMAC require any person intending to make a new water contaminant discharge to file a Notice of Intent to Discharge with the Ground Water Quality Bureau (<https://www.env.nm.gov/gwqb/>) for discharges that may affect groundwater and/or with the Surface Water Quality Bureau (<https://www.env.nm.gov/surface-water-quality/>) for discharges that may affect surface water. Based on the information provided in the notice of intent, the appropriate Bureau will notify the Project Proponent if a discharge permit is required.

- Activities that disturb one (1) acre or more may require a National Pollutant Discharge Elimination System (NPDES) permit from the EPA under Section 402 of the Clean Water Act. The permittee should submit the appropriate application to EPA 14 days prior to initiating construction. In the case of emergency operations, operators must apply no later than 30 days after the start of construction and are considered provisionally covered under the terms and conditions of the EPA-issued general permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of the application (Notice of Intent, or NOI), unless EPA notifies the permittee that the authorization has been delayed or denied. For additional information, contact:

EPA Region 6
1201 Elm St.
Dallas, Texas 75202
Ph: 800-887-6063 or 214-665-2760 if calling from outside Region 6

Or online at: <https://www.epa.gov/npdes-permits/npdes-stormwater-program-region-6>.