



NEW MEXICO ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

Public Involvement Plan (PIP)
for the
Clean Water Act §401 Certification of the
federal draft NPDES permit for the
NPDES Pesticide General Permit NMG870000

January 2021

APPROVAL PAGE

Shelly Lemon
Chief, Surface Water Quality Bureau

Date

Sarah Holcomb
Program Manager, Surface Water Quality Bureau

Date

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I. Public Involvement Plan (PIP) Overview

The New Mexico Environment Department (Department), Surface Water Quality Bureau (Bureau) developed this Public Involvement Plan (PIP) for the State of New Mexico Clean Water Act §401 Certification of the NPDES Pesticide General Permit NMG870000.

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 communities in New Mexico 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, state-wide 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 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)	January 29, 2021
EPA Public Notice for the NPDES Pesticide General Permit NMG870000	January 15, 2021 to March 16, 2021
Public Notice/Comment Period for the Department's 401 Certification	January 29, 2021 to March 16, 2021
Bureau sends 401 Certification to EPA	April 1, 2021

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:

Sarah Holcomb, Program Manager

Surface Water Quality Bureau

1190 St. Francis Dr.

Santa Fe, NM 87505

Phone: (505) 819-9734

Fax: (505) 827-0160

Email: sarah.holcomb@state.nm.us

Erin Shea or Daniel Valenta

Surface Water Quality Bureau

1190 St. Francis Dr.

Santa Fe, NM 87505

Erin Shea Phone: 505-819-8107

Daniel Valenta Phone: 505-819-8112

Fax: (505) 827-0160

Email: erin.shea@state.nm.us

Email: Daniel.valenta@state.nm.us

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 401 Certification.

Based on a four-factor evaluation for limited English proficiency (LEP) accessibility and outreach (NMED Policy and Procedure 07-11), the Bureau determined that additional language assistance (interpretation or translation services) and outreach are needed for this activity, at this time. The Bureau has determined that there are adequate resources available within the Department to provide LEP services, if requested or determined necessary. Public participation activities that are provided by the Bureau for certification or denial of NPDES Permit No. NMG870000 in accordance with federal Clean Water Act Section 401 appear sufficient. If additional information or data are acquired that indicate translation or interpretation services are needed, the Bureau will implement expanded outreach activities described in this PIP.

B. Department Websites

New Mexico Environment Department - <https://www.env.nm.gov/>

Surface Water Quality Bureau - <https://www.env.nm.gov/surface-water-quality/>

Point Source Regulation - <https://www.env.nm.gov/surface-water-quality/point-source-regulation-section/>

NMED SWQB Public Notices - <https://www.env.nm.gov/surface-water-quality/public-notices/>

C. 401 Certification Website

The Bureau maintains a website location for information on 401 Certifications (see website address below). The website will be kept up to date and has information about the process and important documents.

<https://www.env.nm.gov/swqb/WQA/>

<https://www.env.nm.gov/surface-water-quality/public-notices/>

III. Regulatory Framework

The Environmental Protection Agency (EPA) retains permitting authority for the National Pollutant Discharge Elimination System (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 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 notice issued by EPA, which is posted on EPA's public notice website, accompanying all of 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>

This EPA proposed permit has a 60-day public comment period in the federal docket at www.regulations.gov. NMED must also submit their comments to EPA Region 6 by this 60-day comment period, therefore NMED is implementing a 45-day public comment period for consideration in the preparation of the 401 Certification.

Final permits (along with EPA's response to comments) are posted to the Bureau's website at: <https://www.env.nm.gov/surface-water-quality/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 provide 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, 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/surface-water-quality/npdes-permits-401-certification/>

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).

¹ <https://www.env.nm.gov/swqb/Planning/WQMP-CPP/>

The Bureau invites the public to either submit comments on EPA's Proposed NPDES Pesticide General Permit NMG870000 directly to EPA via the docket at www.regulations.gov within the 60-day comment period or comments may be submitted to the Bureau for consideration and inclusion in the 401 Certification within NMED's 45-day comment period. 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 NPDES Pesticide General Permit NMG870000 will be implemented statewide, and thus contains objectives and strategies for the entire state.

Demographic Summary

Using the U.S. Census Bureau, 2012-2016 American Community Survey (ACS) report, New Mexico has an estimated population of 2,082,669; 48.8 percent identify as Hispanic or Latino (which may be of mixed race) and 9 percent identify exclusively as American Indian, with 61 percent of the total population being "minority." Thirty-five (35) percent of persons age 5 and older communicate in a language other than English (non-English) at home, compared to 21.1 percent for the United States. Of the estimated 690,523 individuals that speak a language other than English at home an estimated 545,986 individuals (79%) speak Spanish and 97,977 individuals (14%) speak Navajo and other Native American languages. In addition, an estimated 174,344 individuals over the age of 5 speak English "less than very well."

The per capita income for New Mexico is \$24,459 as compared to the national per capita income of \$32,205, with 19.7% of New Mexico's population living in poverty. These results indicate that for the state of New Mexico, the percentage of Spanish-speaking communication is considerable (i.e., substantially greater than the state or national percentage) and there are demographic factors (i.e., low income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, etc.) that may impact public participation.

It is important for the Bureau to incorporate the linguistic and communication needs of the State when conducting public outreach and participation activities for statewide documents. Therefore, the Bureau will provide information in Spanish and in English for public comment notices, public meeting notices, and other announcements (radio broadcasts, brochures, signs, postcards, etc.) as needed, and strive to make public participation efforts as inclusive as possible within Bureau budget and time limitations. Specific repository addresses that may be used depending on the need, are provided in this PIP in Section V.H.

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 proposed permit renewal and the Bureau's 401 Certification process include:

- Creating and maintaining a specific public notice web page with attachments and links to EPA's draft permit documents (<https://www.env.nm.gov/surface-water-quality/public-notices/>) and EPA's final permit (see <https://www.env.nm.gov/surface-water-quality/npdes-permits/>),
- Creating and maintaining a specific archive webpage with the final 401 Certification letters sent to EPA Region 6 (<https://www.env.nm.gov/surface-water-quality/npdes-permits-401-certification/>),
- Developing a public notice announcing the opening of the 30-day (or more, if applicable) public comment period,

- Posting this notice to the Bureau’s website, and
- Emailing this public notice to Bureau’s email list through the GovDelivery e-mail delivery service (1,800 email addresses as of September 2020).

Copies of the draft permit and any supporting documents may be obtained via download from the EPA website during the comment period at <https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico> or by contacting Sarah Holcomb at (505) 819-9734, sarah.holcomb@state.nm.us, NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502.

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. 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 above, basic information about public involvement opportunities will be in both English and Spanish. This information will include information on how to request assistance. 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 (1,800 email addresses as of September 2020) 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 “*Subscribe to SWQB News*” button on the bottom of the home page. For help, you can contact the Bureau’s website liaison, Heidi Henderson at 505-827-2901 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. This is usually accomplished by a joint notice with EPA’s public notice. NMED publishes notice of draft general NPDES permits in a newspaper of general circulation. EPA publishes notice of draft general NPDES permits in the Federal Register.

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

Based on the Bureau’s evaluation of the community, notices will be translated into Spanish. In addition, the Bureau may post notices on the Department’s Events Calendar at: <https://www.env.nm.gov/events/>

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 60-day public comment period to EPA on the draft NPDES Pesticide General Permit NMG870000 is planned to start January 15, 2021, and end March 16, 2021. The 45-day comment period to the Bureau for consideration in the Clean Water Act Section 401 Certification of the draft NPDES Pesticide General Permit NMG870000 is planned to start on January 29, 2021 and end on March 16, 2021.

G. Other Outreach

Due to the COVID-19 pandemic and health emergency, other means of outreach such as flyers or other hard copy postings will not be used. 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 Sarah Holcomb at (505) 819-9734, sarah.holcomb@state.nm.us, NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502.

Due to the COVID-19 pandemic and health emergency, the Bureau will not provide 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 Sarah Holcomb at (505) 819-9734 or email: sarah.holcomb@state.nm.us.

I. 401 Certification Proceedings, Outcomes and Responses to Comments

To address stakeholder and community members comments, the Bureau will prepare a "Response to Comments" following the close of the public comment period. The final 401 Certification and Response to Comments will be sent to EPA Region 6, 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 (<https://www.env.nm.gov/surface-water-quality/npdes-permits-401-certification/>).