

July 26, 2010

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Glenn Saums, Acting Bureau Chief  
NMED-SWQB  
P.O. Box 5469  
Santa Fe, New Mexico 87502-5469

**Re: Public Discussion Draft for Certification of Federal Permits Pursuant to Section 401 of Clean Water Act.**

Dear Mr. Saums:

Thank you for the opportunity to provide comments on the public discussion draft regulations for certification of federal permits pursuant to Section 401 of the federal Clean Water Act (20.6.2.2000 NMAC). The Albuquerque Bernalillo County Water Utility Authority provides the following comments on the draft regulation for your consideration:

20.6.2.2001(E)(1)(a) and (2)(a). The public notice will include a statement "that the department will accept written comments on the permit certification or denial during the comment period..." Will NMED provide the actual certification for review? What documentation will be available for interested persons to review?

20.6.2.2001(G). It would be helpful if NMED delineated in the statement of reasons for the proposed rule the steps used in the 401 certification review process. Are there other criteria/factors besides those listed in Section 74-6-5(E) NMSA 1978, that NMED uses to deny certification?

What reasons would NMED use to waive certification? Does NMED expect to document "waivers" in writing?

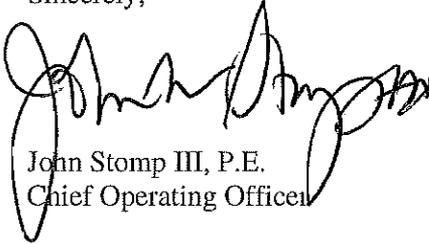
The draft regulations require NMED to take action from the "date a request to grant, deny or waive is received by the department." This is the first time the phrase is used in the regulation. Is that the same as when the state receives notice of the draft permit?

20.6.2.2001(H). "Any person who is adversely affected by the certification or denial of a specific permit may appeal such certification or denial..." This language appears to restrict appeals to certification or denial of certification. What happens if NMED waives certification?

If the certification decision is appealed, what is the impact on the effectiveness of the NPDES permit? Will the appeal impede EPA's issuance of the permit?

Should you have questions about these comments, please contact myself at (505) 768-3631, [jstomp@abcwua.org](mailto:jstomp@abcwua.org) or you may contact Patrick Akin at (505) 873-3696, [pakin@abcwua.org](mailto:pakin@abcwua.org).

Sincerely,

A handwritten signature in black ink, appearing to read "John Stomp III". The signature is stylized and cursive, with a large initial "J" and "S".

John Stomp III, P.E.  
Chief Operating Officer

cc: Barbara Gastian, Manager, Environmental Compliance Division  
Joe Chwirka, P.E., Manager, Plant Operations Division  
Patrick Akin, NPDES Program Manager