



NEW MEXICO ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

Public Involvement Plan (PIP)
for the
Clean Water Act Section 401 Certification of
the U.S. Army Corps of Engineers
Regional General Permit NM-14-01 Under
Section 404 of the Clean Water Act

APPROVAL PAGE

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Public Notice Date: March 28, 2019

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 Clean Water Act Section 401 Certification of the U.S. Army Corps of Engineers (Corps) reissuance of Regional General Permit (RGP) NM-14-01 (permit) under Section 404 of the Clean Water Act.

This permit authorizes discharges of dredged or fill material into Waters of the United States for stream stabilization and water quality improvement projects in ephemeral drainages located in urban environments. "Urban environments" means areas identified in the U.S. Census Bureau 2010 geographic dataset as urbanized areas which for this permit include the greater Albuquerque area including Bernalillo, Corrales, and Rio Rancho, in addition to Farmington, Las Cruces, Los Lunas, and Santa Fe. This permit is not applicable to situations where the segment of ephemeral channel that is proposed for work is located within an *undeveloped* environment, even though it may convey flows downstream to an altered watershed.

Examples of work that may be undertaken under this permit, upon authorization by the USACE, include but are not limited to:

- Bank stabilization projects that exceed the thresholds for Nationwide Permit (NWP) 13 and are determined by the Corps to result in minimal impacts to the aquatic environment.
- Construction of grade control structures, energy dissipaters, and flow deflection structures.
- Installation of water quality improvement features (e.g. debris containment or removal structures, sediment settling basins).
- Any combination of these types of activities if the proposed undertaking will result in minimal impacts to the aquatic environment.

The Bureau encourages the public to learn about and get involved in regulatory decision-making opportunities for dredge and fill activities. 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. A state Water Quality Certification ensures that the action is consistent with state law and complies with state Water Quality Standards, the Water Quality Management Plan/Continuing Planning Process (WQMP/CPP), including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

This PIP integrates information about the community 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, 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.¹ This assessment identifies community outreach needs and provides for public access opportunities above and beyond statutorily mandated requirements, and underscores the provision 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)	March 28, 2019
Public Notice/Comment Period for the Department’s 401 Certification	30 days
Public announcements (radio, brochures, signs, postcards, factsheets, etc.)	As needed
Bureau sends 401 Certification to the Corps	60 days

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:

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 1190 St. Francis Dr.
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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.

¹ See IV. Location and Demographics – Demographic Summary below.

- The Bureau will send a notice in English and Spanish to the Bureau’s listserve announcing the availability of the comment period for consideration in the state’s Section 401 Certification.
- Notices and outreach materials will be in English and Spanish and will include information on non-English speaking persons or persons with disabilities can obtain assistance.
- If non-English speaking individuals contact the Bureau, bureau staff will work with the Department’s interpreter to provide language assistance, either through immediately available staff, or through contracted translation services.
- If individuals with accessibility needs contact the Bureau, bureau staff will work with the Department’s Office of General Counsel to address the request. If a non-English speaking individual provides written comment during the public comment period for consideration in the permit certification, the Bureau will communicate the Certification action to the individual in their preferred language.

B. The Document the Bureau is Reviewing and May Certify

Additional information regarding the reissuance of RGP-NM-14-01 will be available on the Corps website - <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Year/2019/>

C. Department Websites

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

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

Watershed Protection Section - <https://www.env.nm.gov/surface-water-quality/watershed-protection-section/>

D. 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/surface-water-quality/dredgeandfillactivities/>

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

III. Regulatory Framework

The Corps administers a regulatory program to implement Section 10 of the Rivers and Harbors Appropriation Act and Section 404 of the Clean Water Act. The Corps Regulatory Division issues or authorizes permits, which are generally required for earth-moving work within wetlands, lakes, and streams (including ephemeral streams or arroyos). Under Section 401, the Clean Water Act provides States or Tribes the opportunity to certify 404 permits (“dredge and fill” permits). In New Mexico, this certification process depends on where your project is located and the kind of permit the Corps will use (e.g., nationwide, general, individual, etc.).

The Bureau’s Clean Water Act Section 401 certification ensures that the federal permit or action is consistent with State law and otherwise complies with Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process (WQMP/CPP) including Total

Maximum Daily Loads (TMDLs), and the current Antidegradation Policy. The Department's permit certification process is outlined in Section 401 of the Clean Water Act, and New Mexico's Administrative Code at 20.6.2.2002 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 or action, the Bureau can write a condition for that requirement, and the Corps must include the condition in the final permit. The Bureau generally certifies 404 permits conditionally, meaning that we certify the permit if those conditions are followed. 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. The Corps 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 the Corps from issuing the permit.

The federal requirement for 404 dredge and fill permits issued by the Corps is at least a 15-day public review and comment period (33 CFR Parts 325.3 and 330.5), and the state requirement for 401 Certification is at least a 30-day public comment period (20.6.2.2002 NMAC). Typically, this is accomplished via a joint public notice issued at the federal level, which is posted on the Corps public notice website, accompanying all of the draft permit documents:

<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Year/2019/>.

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. However, the initial 2014 Water Quality Certification (WQC) of RGP-14-NM-01 can be referred to as a draft for the 2019 reissuance which is available online beginning on page 5: https://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/Regional%20General%20Permits/New%20Mexico/RGP%20NM-14-01_Stream%20Stabilization%20and%20Water%20Quality%20Improvement%20Projects%20Within%20Urban%20Ephemeral%20Channels%20in%20New%20Mexico.pdf. Federal regulations also require that the 401 Certification is received by the Corps within 60 days after the draft permit is mailed (40 CFR Part 124.53(c)(3)). A final copy of the 401 Certification will be sent to the Corps, the applicant and those who submitted comments for consideration in the 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/ CPP). 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).

To fulfill this requirement, the Bureau invites the public to submit comments on RGP-NM-14-01 to the Bureau for consideration and inclusion in the 401 Certification. 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

Regional General Permit-NM-14-01 is for ephemeral Waters of the US located within the following urbanized areas: the greater Albuquerque area including Bernalillo, Corrales, and Rio Rancho, in addition to Farmington, Las Cruces, Los Lunas, and Santa Fe.

Demographic Summary

Demographic indicators were obtained from EPA EJSCREEN, an environmental justice screening and mapping tool, available on-line at <https://www.epa.gov/ejscreen>. EJSCREEN is based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and reports. Users choose the geographic area of interest by indicating a point, line or polygon on the map; users may also choose to select a “buffer” area (up to 10 miles) around the point, line or polygon to better capture the affected community. EJSCREEN then provides a report that describes demographic and environmental information for that area, with or without an assigned buffer. The 2012-2016 ACS Report available through EJSCREEN provided quantitative information regarding demographic indicators.

Summary of Site-Specific EJSCREEN Inputs for Corps RGP-NM-14-01

Community of Concern = Residents living in the following urbanized areas: the greater Albuquerque area including Bernalillo, Corrales, and Rio Rancho, in addition to Farmington, Las Cruces, Los Lunas, and Santa Fe.

Buffer = 4-mile buffer around the 2014 U.S. Census Bureau defined urbanized areas which are contiguous areas of populations greater than 50,000 people.

The community has a combined estimated total population of 1,174,245. A summary table from the 2012-2016 ACS (American Community Survey) report is provided in the following table.

Urbanized Area	Total Number of Households	Per capita income compared to the per capita income for the U.S.	Percent of Minority Population and percent of population by race*	Percent of linguistically isolated households by language	Percent or population by ability to speak English
Greater Albuquerque area (including Bernalillo, Rio Rancho and Corrales)	298,756	\$27,931 The U.S. per Capita Income is \$31,128	59% Minority 48% Hispanic 41% White, Non-Hispanic 4% American Indian	8% - of which 83% speak Spanish	70% Speak only English at Home 30% Speak Non-English at Home
Farmington	26,033	\$24,389 The U.S. per Capita Income is \$31,128	50% Minority 24% Hispanic 50% White, Non-Hispanic 23% American Indian	5% - of which 64% speak Spanish	77% Speak only English at Home 23% Speak Non-English at Home
Los Lunas	25,381	\$20,432 The U.S. per Capita Income is \$31,128	67% Minority 60% Hispanic 33% White, Non-Hispanic 5% American Indian	8% - of which 94% speak Spanish	64% Speak only English at Home 36% Speak Non-English at Home
Las Cruces	54,460	\$21,760 The U.S. per Capita Income is \$31,128	65% Minority 59% Hispanic 35% White, Non-Hispanic 1% American Indian	9% - of which 91% speak Spanish	60% Speak only English at Home 40% Speak Non-English at Home
Santa Fe	45,230	\$41,454 The U.S. per Capita Income is \$31,128	59% Minority 54% Hispanic 41% White, Non-Hispanic 2% American Indian	11% - of which 93% speak Spanish	64% Speak only English at home 36% Speak Non-English at Home

*The ACS Report notes that Hispanic population can be of any race.

The results summarized in the table above indicate that 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 New Mexico communities when conducting public outreach and participation activities. To help accomplish this, for this activity, 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.), and strive to make public participation efforts as inclusive as possible within Bureau budget and time limitations.

V. Public Participation & Outreach Activities

The public may ask questions about dredge and fill (“404”) 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, or in this instance the RGP-NM-14-01, must be submitted during the noticed comment periods, and in accordance with the public notice.

Specific outreach activities related to this RGP-NM-14-01 and the Bureau’s 401 Certification process include:

- Developing a public notice announcing the opening of the 30-day (or more, if applicable) public comment period (joint notice with the Corps if practical),
- Posting this notice to the Bureau’s website, and
- Emailing this public notice to the Bureau’s extensive email list through the GovDelivery e-mail delivery service (1,649 email addresses as of September 10, 2018).

The most direct way to learn about and be involved in the decision-making process for this 401 Certification is to submit a comment to the Bureau. As stated in Section III above, the Bureau can only mandate changes to the RGP-NM-14-01 if based on state law; however, the Corps 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 in the PIP, basic information about public involvement opportunities will be in both English and Spanish. This information will include how to request materials in Spanish or to speak with Bureau staff through an interpreter. 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 extensive email list (1,649 email addresses as of September 10, 2018) 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. 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/>

D. Informational Pamphlets

The Bureau does not develop informational pamphlets for draft certifications. Generally, information about how the RGP-NM-14-01 was developed or has changed is documented in the fact sheet or statement of basis which is located on the Corps' website.

E. Public Comment Period

The 30-day comment period to the Bureau for consideration in the Clean Water Act Section 401 Certification of the RGP-NM-14-01 is planned to start on March 28, 2019, and end on April 27, 2019, at 5:00 p.m.

F. Other Outreach

Other means of outreach such as flyers announcing public comment periods and meetings may be posted in locations throughout the community (e.g., local businesses, schools, libraries) and on the Department's website, at the Bureau's discretion after consideration of public interest and input.

G. Information Repositories

Copies of the RGP-NM-14-01 and any of the above-mentioned supporting documents may be obtained via download from the Corps' website at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/> or by contacting Abe Franklin at (505) 827-2793, abraham.franklin@state.nm.us, NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502.

Post offices, community centers and public libraries, at the Bureau's discretion after consideration of public interest and input, may serve as access areas for the Bureau to leave hard copies of important documents and information about how to comment on the permit. The following is a list of locations where hard copies of relevant documents will be available to the community:

None identified at this time.

H. 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 the Corps, the permit applicant and the interested stakeholder and/or community members who commented directly to the Bureau. Comments received will also be summarized in the Section 401 state certification of the Section 404 federal permit.