



NEW MEXICO ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

Public Involvement Plan (PIP)
for the State of New Mexico
Clean Water Act §401
Water Quality Certification
For the Proposed Revisions to Regional
General Permit 16-01

**December 2020
APPROVAL PAGE**

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Date

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Date

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 **Water Quality Certification (WQC) for the Proposed Revisions to Regional General Permit (RGP) 16-01** issued by the US Army Corps of Engineers (USACE or Corps). Certification, certification with conditions, or denial of certification is required by CWA §401 to ensure that RGPs are consistent with state law, comply with the state Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the 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 RGPs.

Activities to be covered by the RGP 16-01 include Utility Line Construction, Maintenance, Repair or Removal within the State of New Mexico and West Texas. The Department's certification action will be applicable to the non-tribal portions of New Mexico. The Bureau encourages public comments for certifying revised RGP 16-01 (20.6.2.2002.F NMAC). The purpose of this PIP is to provide public participation opportunities and information that may be needed for the public to participate in the public comment period for certifying revised RGP 16-01.

This PIP integrates information about the community and identifies resources needed by the Bureau to successfully incorporate community participation. The PIP identifies the Department staff and resources needed to accomplish these activities.

The Bureau will meet the public participation requirements for certifying revised RGP 16-01 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.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 WQC for the proposed revisions to RGP 16-01.

As much as possible, public participation and informational activities related to the WQC for the proposed revisions to RGP 16-01 will be held within the timelines outlined in the table below. The 30-day comment period shall begin on the date of the public notice provided under Subsection D and F of 20.6.2.2002 NMAC.

The WQC for the proposed revisions to RGP 16-01 is a state-wide document pertinent to a

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

relatively large community of Spanish speakers, and the Bureau will provide pertinent information in both English and Spanish in public meeting notices, public comment notices, and other announcements (radio broadcasts, brochures, signs, postcards, fact sheets, etc.), as necessary. During public comment periods, hardcopies of relevant documents may be reviewed at the information repositories listed in “Public Participation and Outreach Activities” – Section V.H.

More detailed information about planned Bureau outreach is available in this PIP.

Activity	Dates
Notice PIP (invite public input)	December 2020
Public Notice for the CWA §401 Certification of the Nationwide Permits	December 14, 2020
Public Comment Period	30 days
Public announcements (radio, brochures, signs, postcards, factsheets, etc.)	As needed
Bureau sends the CWA §401 Certification to the USACE	January 16, 2021 i.e. 60 days from the cert request received on November 17, 2020. Note that a short extension may be requested

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. **Contacts**

Bureau contact for questions regarding the State of New Mexico WQC for the revised Regional General Permit 16-01, the Bureau’s website, or this PIP, are listed below:

Abe Franklin, Program Manager
 Surface Water Quality Bureau
 1190 South St. Francis Dr.
 Santa Fe, NM 87505
 Phone: (505) 946-8952
 Email: Abraham.Franklin@state.nm.us

Davena Crosley
 Surface Water Quality Bureau
 2301 Entrada del Sol
 Las Cruces, NM 88001
 Phone: (575) 636-3425
 Email: Davena.Crosley@state.nm.us

The NMED SWQB offices are currently closed due to the COVID-19 public health emergency. If you need to contact the Bureau regarding the proposed revisions to RGP 16-01, please call or email the bureau contacts listed above.

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 WQC for revised Regional General Permit 16-01.

B. Department Websites

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

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

C. CWA §401 Water Quality 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/>

D. The Document the Bureau is Reviewing under CWA §401

Additional information regarding the Reissuance of Regional General permit 16-01 is available from the USACE's Albuquerque District's website at

<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Article/2418377/joint-public-notice-revisions-to-regional-general-permit-16-01/>

III. Regulatory Framework

The USACE administers a regulatory program to implement Section 10 of the Rivers and Harbors Appropriation Act and Section 404 of the Clean Water Act (CWA). Regional General Permits are general permits issued under CWA §404 on a regional basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects.

CWA §401 provides States, Tribes, or Pueblos the opportunity to certify RGPs. The Bureau's CWA §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 CWA §401, and New Mexico's Administrative Code at 20.6.2.2002 NMAC.

The Bureau has four options in a CWA §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 provided the condition meets the requirements under 40 CFR 121. The Bureau generally certifies Regional General Permits conditionally, meaning the permit is only certified if those conditions are followed. The second option is that the Bureau can comment on the draft RGP 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 RGP. Thirdly, the Bureau can deny certification of the RGP, or portions of the RGP, if it will not comply with the applicable sections of the Clean Water Act and appropriate requirements of state law provided the denial meets requirements under 40 CFR 121. This would prohibit the Corps from authorizing work with respect to the specific denial and

would mean that an Individual Water Quality Certification would be favored by the Bureau in place of the general WQC for RGP 16-01. The fourth option is to waive certification.

The public comment period for the USACE Regional General Permit 16-01 is 30-days and began November 17, 2020 and ends December 16, 2020

(<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Article/2418377/joint-public-notice-revisions-to-regional-general-permit-16-01/>). The state's public comment period is at least 30-days (20.6.2.2002 NMAC). Typically, this is accomplished via a joint public notice issued at the federal level, which is posted on the USACE public notice website, accompanying the draft permit documents:

<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Article/2418377/joint-public-notice-revisions-to-regional-general-permit-16-01/>.

However, the Bureau will conduct a separate public notice pursuant to 20.6.2.2202.D NMAC.

The Bureau does not prepare a draft WQC 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. Federal regulations also require that the WQC is received by the Corps within 60 days after the draft permit is mailed (40 CFR Part 121). A final copy of the WQC for the proposed revised Regional General Permit 16-01 will be sent to the USACE and those who submitted comments for consideration in the CWA §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/PPP). 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 the WQC for the proposed revisions to RGP 16-01 to the Bureau for consideration and inclusion in the 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

The WQC for RGP 16-01 is a statewide document and applies only to areas where the State of New Mexico is the certifying authority. Native American Tribes and Pueblos with water quality certifying authority from Environmental Protection Agency (EPA) have the authority to make WQC decisions on their lands.

Demographic Summary

Using U.S. Census Bureau 2013-2017 American Community Survey (ACS) Report for the state of New Mexico, New Mexico has an estimated population of 2,084,828; 48% identify as Hispanic or Latino (which may be of mixed race) and 9% identify exclusively as American Indian. The percent of persons that communicate in a language other than English (non-English) at home is 35%, compared to 21.5% for the United States. The per capita income for New Mexico is \$25,257 as compared to the national per capita income of \$32,621, with 19.5% 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.

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.), and strive to make public participation efforts as inclusive as possible within Bureau budget and time limitations. Specific information repositories that may be used depending on the need are provided in Section V.H. of this PIP.

V. Public Participation & Outreach Activities

The public may ask questions about the WQC for the proposed revisions to Regional General Permit 16-01, at any time. However, the Bureau emphasizes that to be included in the administrative record, comments solicited by public notices about the WQC must be submitted during the noticed comment period, and in accordance with the public notice.

Specific outreach activities related to the draft WQC for the proposed revisions to Regional General Permit 16-01 include:

- Creating and maintaining a specific web page with attachments and links to all pertinent documents (see part II.B and II.C above),
- Developing a public notice announcing the opening of the 30-day public comment period on the WQC,
- Posting this notice to the SWQB website,
- Emailing this public notice to SWQB's extensive email list through the GovDelivery e-mail delivery service (1,796 email addresses as of July 14, 2020), and
- Sending this public notice to NMED's public relations officer for a press release
- Publishing the notice in at least one newspaper of general circulation

The most direct way to learn about and be involved in the decision-making process for this WQC is to submit a comment to the Bureau (or to the USACE for comments specific to RGP 16-01 by December 16).

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 (1,810 email addresses as of November 19, 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) 819-9986 or email Heidi.Henderson@state.nm.us.

C. Notices in State Newspaper and Local Newspaper

The notice will be published in at least one newspaper of general circulation pursuant to 20.6.2.2002.D.1.b NMAC.

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 RGPs. Generally, information about how USACE permit was developed or has changed is documented in the fact sheet or statement of basis accompanying the draft RGP, which is located along with the draft permit itself on USACE's public notice website <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Article/2418377/joint-public-notice-revisions-to-regional-general-permit-16-01/>.

F. Public Comment Period

The 30-day public comment period on the CWA §401 Water Quality Certification for the Proposed 2020 Nationwide Permits is planned to start December 14, 2020, and end January 13, 2021, at 5:00 p.m.

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 revisions to Regional General Permit 16-01 and any of the above-mentioned supporting documents may be obtained via download from the USACE's website at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/>, or the Bureau's website at <https://www.env.nm.gov/surface-water-quality/public-notices/> or by contacting Bureau contacts listed above in Section II.

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. The Bureau requests that individuals access to Water Quality Certification documents and information online at the links noted above. If absolutely needed, the Bureau will work with individuals to provide safe access to hardcopies. If you would like to request hard copies of important documents or information about how to comment on the proposed revisions to RGP 16-01, please contact Abraham Franklin at (505) 946-8952 or email: abraham.franklin@state.nm.us. You may also contact Davena Crosley at (575) 636-3425 or email: davena.crosley@state.nm.us.

I. CWA §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 CWA §401 WQC of the Section 404 federal permit.