

## How to obtain a Clean Water Act §404 permit and §401 water quality certification

Start by contacting the U.S. Army Corps of Engineers (Corps) Albuquerque District (<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>). The Corps generally issues three kinds of permits in New Mexico: Standard *Individual Permits* (IPs), *Nationwide Permits* (NWP), and the *Regional General Permit (RGP)*.

For IPs, submit an ENG FORM 4345 application to both the Corps and the New Mexico Environment Department-Surface Water Quality Bureau (SWQB). State regulations require a 30-day public comment period. The new §401 Rule is described within the Code of Federal Regulations at Title 40, Part 121 and requires the project proponent to submit a pre-filing-meeting with SWQB at least 30 days prior to submitting a certification request (<https://www.epa.gov/cwa-401/final-rule-clean-water-act-section-401-certification-rule>). The new §401 Rule affirms that certifying authorities may request additional information during the reasonable period of time (in addition to the information contained in the certification request), and certifying authorities may deny certification requests if they have inadequate information to determine whether a discharge complies with water quality requirements. SWQB will evaluate the application materials and other information and will typically issue an individual water quality certification (WQC) with conditions necessary to protect water quality. Project proponents must follow all conditions within the Corps permit and the individual WQC.

The Corps most commonly issues NWP which cover a range of activities that generally have no more than minor impacts to waters. For Corps authorization to use a NWP, submit a *Pre-Construction Notification (PCN)* to both the Corps and SWQB. The Water Quality Certification (WQC) for the use of NWP has already certified all NWP *except* NWP 16 (Return Water from Upland Contained Disposal Areas) and NWP within Outstanding National Resource Waters (ONRW) other than NWP-27 which is certified for use in ONRW. Activities that fall under a NWP must comply with all WQC Conditions. Additionally, *Corps Regional Condition 2* requires applicants to **obtain confirmation** from SWQB for all proposed activities in intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges). The WQC for the use of NWP lists information that SWQB requires before issuing confirmation (applicants do not need to replicate information already included in the PCN). SWQB will review the PCN and any other required information, and then issue the confirmation in the form of an email, usually within 10 days. This confirmation process is a form of agency coordination between SWQB and the Corps. SWQB confirmation may recommend that the Corps include *Special Conditions*. Finally, please notice that some of the WQC conditions have “Unless approved by NMED” language; and the best time to request such approval is when you submit the PCN to SWQB.

For any questions please contact SWQB. SWQB’s 401 Contact Map is available at: <https://www.env.nm.gov/surface-water-quality/dredgeandfillactivities/>.