

Enclosure: EPA Certification Decisions on 2026 NWP

Clean Water Act (CWA) Section 401 requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, EPA Region 9 is the certifying authority for all federally recognized Tribes that do not have treatment in a similar manner as a state¹ in California, Nevada, and Arizona, and the Navajo Allottee lands in New Mexico. Additionally, the states of California, Nevada, Arizona, and Hawaii, and the territories of American Samoa, Guam, and CNMI do not have authority to provide CWA section 401 certification for projects in lands of exclusive federal jurisdiction in relevant respects. Therefore, EPA is making the certification decision for these lands of exclusive federal jurisdiction and other lands where there is no other certifying authority.

Project Description

On June 18, 2025, the Corps proposed to reissue 56 NWP and 1 new NWP that would expire in March 2026. 90 FR 26100 (June 18, 2025). The purpose of the NWP is to authorize categories of activities under CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental impacts. For more details see: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

The EPA's Public Notice Process

On June 18, 2025, the EPA received a request for certification from the project proponent. On July 8, 2025, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until August 11, 2025. EPA received no public comments during the public notice period.

General Information

The general information provided in this section does not constitute a certification condition.

General Applicability

- If a project proposal does not meet either the general or NWP-specific certification conditions, or if certification is denied for a specific NWP, the project proponent must request an individual certification from EPA Region 9.

Documentation Recommendations

- Project proponents for potential projects authorized under the NWP should retain this certification in their files with the applicable NWP as documentation of EPA's certification decisions for the above-referenced proposed NWP. This certification is specifically associated with the proposed NWP described above and expires when those NWP expire,

¹ See Attachment 1 for a list of tribes for which EPA R9 acts as the certifying authority (December 2025). As this list is subject to change in the event a Tribe receives Treatment in a Similar Manner as a State (TAS) for the 401 program, the Corps and Project Proponents should confirm with EPA at R9cwa401@epa.gov.