



DEPARTMENT OF THE ARMY
ALASKA DISTRICT CORPS OF ENGINEERS
P.O. BOX 6898
JBER, AK 99506-0898

Regulatory Division

June 18, 2025

Reference: 2026 Nationwide Permits
401 Water Quality Certification
(Request for Certification)

Mr. Nick Waldo
Environmental Program Manager
Alaska Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811
nick.waldo@alaska.gov

Dear Mr. Waldo:

The United States Army Corps of Engineers (Corps) is preparing to reissue its existing Nationwide Permits (NWP) and associated general conditions and definitions. The proposed rule for reissuing the NWP was published in the Federal Register June 18, 2025. The Corps is proposing to reissue most of the NWP without changes. The NWP Federal Register Notice (FRN) is located at:
<https://www.federalregister.gov/documents/2025/06/18/2025-11190/proposal-to-reissue-and-modify-nationwide-permits>.

Under Section 401 of the Clean Water Act (CWA), an activity which may result in a discharge into waters of the U.S., that is authorized by a Federal permit, must receive a CWA Section 401 Water Quality Certification (WQC), or waiver, from the appropriate certifying authority. This process allows the certifying authority an opportunity to ensure that any discharge will comply with applicable water quality requirements.

In accordance with 40 CFR 121.5, this letter and its attachments serve as the request for certification. As required in 40 CFR 121.5(a)(2) the FRN includes readily available water quality-related materials that informed the development of the NWP.

Information required in a certification request to the certifying authority, as defined at 40 CFR 121.5(c), is in the FRN. The Corps submitted the pre-filing meeting request to the certifying authority office on April 30, 2025, as shown in the attachment.

The Alaska Department of Environmental Conservation has identified additional contents that are required in a certification request that are relevant to the water quality-related impacts from the activity including a list of permit NWP verifications for the last 5-year period.

The date of this letter serves as the date on which the reasonable period of time begins running. The reasonable period of time for certifying authorities to act on the proposed NWPs reissuance is six months, in accordance with 40 CFR 121.6. This provides a consistent reasonable period of time for all certifying authorities. The reasonable period of time ends on December 17, 2025. Certifying authorities can act on the certification request for the proposed NWPs in less time if they choose to do so.

The proposed categories of activities to be authorized by the NWPs for which certification is requested are described in the text of the proposed NWPs. Nationwide permits numbered 15, 16, 17, 18, 21, 25, 29, 30, 39, 40, 41, 42, 43, 46, 49, 50, and 59 would authorize activities that may result in discharges and therefore 401 water quality certification is required for those NWPs. Nationwide permits numbered 3, 4, 5, 6, 7, 12, 13, 14, 19, 20, 22, 23, 27, 31, 32, 33, 36, 37, 38, 44, 45, 48, 51, 52, 53, 54, 57, 58, and A would authorize various activities, some of which may result in a discharge and require 401 water quality certification, and others which may not. It is the opinion of the Corps Nationwide permits numbered 1, 2, 9, 10, 11, 24, 28, 35, and 55 could not reasonably be expected to result in a discharge into waters of the United States and we do not deem certification to be necessary for this group of NWPs; however, the final decision of whether certification is needed for any of these nine types of activities rests with the certifying authority. Additionally, NWP 8 only authorizes activities seaward of the territorial seas and therefore does not require water quality certification.

Please find attached a list of NWPs issued over the last 5 years, that you may find helpful in making your decisions.

The Alaska District is proposing regional conditions for the proposed NWPs, attached. Note that the proposed *Regional Condition A – Revoked Permits* continues to revoke the usage of NWPs 24 (Indian Tribe or State Administered Section 404 Programs) and 34 (Cranberry Production Activities) within the state of Alaska.

We note that the Environmental Protection Agency regulations implementing Section 401 have changed since the Corps last requested water quality certification for the reissuance of the NWP in 2020. While the new regulations at 40 CFR 121 allow for the modification of a grant of certification upon the mutual agreement of the certifying authority and the Corps, conditions or other language that reserve the unilateral right of the certifying authority to modify or retract a certification are not allowed and may result in the Corps declining to rely on blanket certifications that contain such language.

In accordance with the Corps' regulations at 33 CFR 330.4(c), if you deny water quality certification for certain activities authorized by the proposed NWP within the State of Alaska, then the Corps will deny without prejudice authorization for those activities. Anyone wanting to perform such activities must first obtain an activity-specific water quality certification or waiver thereof from your office before proceeding under the NWP.

Thank you for your attention regarding this matter. The Corps looks forward to working with the EPA throughout the water quality certification process for the proposed NWP. If you have any questions regarding this request, please feel free to contact Mr. Frederick Land by telephone at (907) 753-2715 or by email at: frederick.j.land@usace.army.mil.

Sincerely,

A handwritten signature in black ink, reading "Heather N. Markway". The signature is fluid and cursive, with a large, stylized "H" and "M".

Heather N. Markway
Chief, South Branch

Enclosures:
2026 NWP 401 WQC pre-filing meeting request
NWP 5 Year Issuance in Excel Spreadsheet
Alaska District's Proposed Regional Conditions
Redline Comparison of 2021 to 2026 NWP