

State Authority and Public Notices

It should be noted that the 401 Water Quality (WQ) Certifications are not considered discharge permits. A 401 certifies that a project with a federally permitted discharge will not violate water quality standards if appropriate controls (Best Management Practices) are put into place.

The statutory authority for issuing 401 Water Quality Certifications for the State of Nevada is derived from the Nevada Revised Statutes:

NRS 445A.620 Certification of applicant if federal license or permit required.

1. The Director may grant, deny or waive, in compliance with regulations prescribed by the Commission, certification of an applicant with respect to facilities or activities within the State for which a federal license or permit is required.
2. No action may be taken by the Director until there has been public notice and an opportunity for a public hearing. (Added to NRS by 1973, 1715)

The requirement for a public notice or opportunity for a public hearing when a 401 certification is submitted to the Army Corps is met through the public notice process established by the Corps for the 404 permits. For large projects requiring an individual 404 permit, the applications for both the 404 and 401 are typically submitted concurrently to the Corps and the state. Thus the public notice for the individual 404 permit serves as the public notice for the associated 401 WQ certification.

<http://www.spk.usace.army.mil/Media/RegulatoryPublicNotices.aspx>

Notices are organized by year. The Corps also provides instructions to members of the public who wish to sign up to receive public notices they issue. If a specific project requires an Individual permit (SP), the Corps will issue a public notice. Text and relevant drawings and maps are placed on the Sacramento District website for public review. Final actions are listed for each month and indicate if a 404 authorization has been issued, verified or withdrawn. Pending actions will provide a start date for Corps evaluation. All 404 permit actions will require a 401 WQ Certification to be issued or waived by the State in order to complete their process. Each table provides a column identifying the type of 404 authorization the Corps will use to permit a project.

<http://www.spk.usace.army.mil/Missions/Regulatory/Permitting.aspx#finalactions>

Letters of Permission (LOP), any Regional General Permits (RGP) and Nationwide Permits (NWP) were subject to the public notice process and opportunity for public hearing prior to their utilization in Nevada. LOPs generally require an individual 401 WQ certification and are subject to individual evaluation by the State to determine whether a waiver or certification is warranted. RGPs may simply require a project proponent to notify the State prior to the commencement of any construction activity, especially if it only involves emergency repairs. A formal 401 certification letter may not be needed. To determine which NWP requires individual certification please click on the following link:

Status of Nationwide Permits reissued in 2017:

https://ndep.nv.gov/uploads/water-401cert-docs/NWPs_401_2017-2022.pdf

To discuss 401 WQ Certification of a specific project, please contact Birgit Widegren at 775-687-9550 or via email at bwidegren@ndep.nv.gov.