



2026 WATER PERMITTING UPDATES

Feb 23, 2026 | Amanda Ferguson

New Nationwide Permits Effective March 15, 2026

On January 8, 2026, the U.S. Army Corps of Engineers (“USACE”) reissued 56 existing nationwide permits (“NWP”) with minor alterations along with one new NWP. NWPs are general permits that allow for work within federally jurisdictional streams, wetlands, and other waters of the United States in specified circumstances, and without the need for individual permits under Section 404 of the Clean Water Act (“CWA”) and/or Section 10 of the Rivers and Harbors Act of 1899. The NWPs cover a variety of specific activities, including, but not limited to: residential developments, linear transportation projects, oil and natural gas pipeline activities, temporary construction activities, cleanup of hazardous and toxic waste sites, electric utility line and telecommunications activities, commercial and institutional developments, stormwater management facilities, and water reclamation and reuse facilities. The new addition, NWP 60, covers work and structures to improve the passage of fish and aquatic organisms.

The 2026 NWPs take effect on March 15th. Activities authorized by a 2021 or 2022 NWP that have commenced or are under contract to commence by March 14, 2026, must be completed within one year (i.e., by March 14, 2027). Activities previously authorized by the 2021 or 2022 NWPs that have not commenced or are not under contract to commence by March 14, 2026, or that will not be completed by March 14, 2027, will require reauthorization under the 2026 NWPs, provided those activities still qualify for authorization under the 2026 NWPs.

NWPs allow for streamlined authorizations—according to the USACE, in fiscal year 2024, the average processing time for a NWP preconstruction notification was 55 days, whereas individual permit processing was 253 days. If you’d like to discuss the applicability of the NWPs or environmental permitting strategy for an ongoing or upcoming project, please feel free to contact any of Roetzel’s EHS attorneys. Fact sheets, summaries, and the text of the 2026 NWPs are available from the [USACE](#).

Newly Proposed 401 Certification Rule

On January 13, 2026, the U.S. EPA issued proposed revisions to the CWA Section 401 water quality certification regulations. Water quality certifications (“WQCs”) are the mechanism by which states impose restrictions on discharges as part of a federally issued permit. The proposed revisions would limit the scope of WQCs and, thus, the states’ ability to impose conditions on a project by rolling back portions of the Biden Administration’s 2023 regulations and largely reinstating the prior Trump Administration’s 2020 regulations.

While not exhaustive, notable proposed changes within the rule include the following:

- **Scope.** The proposed rule limits WQCs to addressing discharges “from a point source into waters of the United States” rather than impacts related to the “activity as a whole.” This would have the effect of preventing states from using WQCs to address nonpoint source discharges, impacts to waters of the state that are not federally jurisdictional, and non-water quality concerns.
- **Content.** The proposed rule prescribes the required information that must be submitted as part of a request for a 401 WQC and removes language that allowed states to impose additional requirements.
- **Timing.** The proposed rule severely limits a state’s ability to extend the one-year timeline within which it must certify a WQC. This timeline has previously been the focus of a significant amount of litigation, because if the certification is not made within the one-year timeframe, it is waived and the state cannot impose requirements on the project as part of the federal permit.



U.S. EPA will not finalize the proposed rule until after its review of public comments, and if the rule is finalized, it will likely be subject to litigation. We will continue to monitor developments concerning the proposed rule and are prepared to advise on how they may impact applicants for a WQC.

For more information, please feel free to contact any of Roetzel's EHS attorneys: Terry Finn, Shane Farolino, Amanda Ferguson and Gary Pasheilich.

Amanda M. Ferguson

Associate

614.427.1393 | aferguson@ralaw.com