



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
**NEBRASKA REGULATORY OFFICE**  
**8901 SOUTH 154TH STREET, SUITE 2**  
**OMAHA, NE 68138-3635**

August 18, 2021

Regulatory Branch, Nebraska Regulatory Office

**SUBJECT: 2020 NWP Re-Issuance Request for Water Quality Certification -  
Reasonable Period of Time Extension for Remaining 41 NWPs**

Mr. Dane Pauley  
CWA Section 401 Coordinator  
Nebraska Department of Environment & Energy  
PO Box 98922  
Lincoln, Nebraska 68509-8922

Dear Mr. Pauley:

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the Nationwide Permits (NWPs). On January 13, 2021, the Corps published in the Federal Register its final rule reissuing 12 NWPs and issuing 4 new NWPs, as well as the NWP general conditions and definitions. On June 11, 2021, the Corps submitted a draft final rule for the remaining 41 NWPs for review by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. In that draft final rule, there are no material changes to the 41 proposed NWPs that would trigger a need for the Corps to submit new water quality certification (WQC) requests for the 41 proposed NWPs.

In our letter dated October 13, 2020, the Omaha District requested WQC under Section 401 of the Clean Water Act for the proposed issuance of those NWPs that may result in a discharge in waters of the United States in the State of Nebraska. In that letter, the Omaha District established the reasonable period of time for the certifying authority to act on our WQC request as 60 days from October 13, 2020.

For the 41 proposed NWPs that are in the draft final rule that was submitted to OMB on June 11, 2021, the Corps has decided to provide certifying authorities with the opportunity to revise or reconsider their WQC decisions for our WQC request that was provided to you on October 13, 2020. Therefore, Omaha District Office is extending the reasonable period of time for the certifying authority to act on our WQC request for the 41 NWPs that have not yet been finalized. The extended reasonable period of time will begin on the date of this letter and will end on October 13, 2021. The Corps is considering the date of receipt to be the date of this letter.

The 41 proposed NWPs subject to this extension of the reasonable period of time are: NWPs numbered 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54 and E. In the draft final rule, proposed new NWP E is designated as NWP 59. NWPs numbered 1, 2, 8, 9, 10, 11, 24, 28, and 35 do

not require section 401 WQC because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States. In the case of NWP 8, it only authorizes activities seaward of the territorial seas.

Because the Corps has not yet made a final decision on whether to issue these 41 proposed NWPs, and the one-year limit for a certifying authority to act on a request for WQC has not yet expired, the Corps is providing certifying authorities an opportunity to revise or reconsider their decision (i.e., granted, granted with conditions, denied, waived) on the WQC request for these 41 NWPs. If you choose not to take an action by October 13, 2021, the Omaha District will consider the action you originally took on the October 13, 2020 WQC request as your final action on that WQC request. Any new or revised WQCs, or any new waivers or denials issued during the extended reasonable period of time will be deemed to supersede the original actions you took on the WQC request for these 41 proposed NWPs. Any action by a certifying authority during this extended reasonable period of time will not affect the certification action for the 16 NWPs that were finalized on January 13, 2021.

To assist you during this extension of the reasonable period of time for our WQC request, please find enclosed a copy of the text of the 41 draft final NWPs. If the State of Nebraska has questions about the 41 NWPs, you are encouraged to contact the Omaha District's point-of-contact for the certification requests for the proposed issuance of the NWPs, Matt Wray at 402-896-0896 or email him at [matt.t.wray@usace.army.mil](mailto:matt.t.wray@usace.army.mil).

EPA is available to provide technical assistance to certifying authorities pursuant to 40 CFR 121.16 during this extended reasonable period of time. To request assistance, please contact Jennifer Ousley at 913-551-7498 or email her at [ousely.jennifer@epa.gov](mailto:ousely.jennifer@epa.gov) at EPA Region 7, or certifying authorities may send general 401 inquiries to [CWA401@epa.gov](mailto:CWA401@epa.gov) at EPA Headquarters.

Thank you for your attention regarding this matter. We remain available to discuss issues or proposed conditions you may be considering for the 41 NWPs. We look forward to working with your office on this effort.

Sincerely,



John L. Moeschen  
Nebraska State Project Manager