



COLORADO

**Department of Public
Health & Environment**

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December 14, 2020

RE: Response to Request for Action on Nationwide Permits under Section 401 of the Clean Water Act

Dear Ms. Allen:

This is in response to your October 15, 2020 request for the State of Colorado to take action under Section 401 of the Clean Water Act on the renewal of certain Nationwide Permits (“NWP”) and the issuance of five new NWPs, including regional conditions where relevant, that may result in a discharge to waters of the United States in Colorado. The draft NWPs at-issue, as published in the Federal Register on September 15, 2020, are numbered 15, 16, 17, 18, 21, 25, 29, 30, 34, 39, 40, 41, 42, 43, 46, 49, 50, and E (which would authorize activities that may result in discharges) and 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, C, and D (which would authorize various activities, some of which may result in a discharge). The Water Quality Control Division (Division) of the Colorado Department of Public Health and Environment submitted comments on the draft NWPs and associated regional conditions on November 8, 2020. The Division’s comments expressed concerns regarding the elimination of the 300 linear foot cap on impacts to stream channels associated with projects authorized under NWPs, the relaxation of pre-construction notification requirements for some NWPs, and proposed modifications to regional conditions that currently provide enhanced protections for sensitive aquatic resources, including small streams, fens, spawning areas, and springs.

Water quality certification of NWPs in Colorado is covered by a provision in the state’s Water Quality Control Act, which reads as follows: “General or nationwide permits under section 404 of the federal act shall be certified for use in Colorado without the imposition of any additional conditions.” C.R.S. § 25-8-302(1)(f).

We appreciate the continued efforts of the various Corps Districts to protect Colorado’s water resources. Please do not hesitate to let our staff know if we can be of help as you move forward with implementation of these NWPs. Please do not hesitate to contact Trevor Klein (trevor.klein@state.co.us), Scott Garncarz (scott.garncarz@state.co.us), or myself (aimee.konowal@state.co.us) with any questions.



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Sincerely,

Aimee M Konowal

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Cc: Jennifer Opila, Water Quality Control Division
Nicole Rowan, Water Quality Control Division
Annette Quill, Senior Assistant Attorney General