



**US Army Corps
of Engineers®**
Albuquerque District

PUBLIC NOTICE

Regional General Permit File No.:	SPA-2008-00110-DUR
Public Notice Date:	March 26, 2008
Comment Due Date:	April 10, 2008
USACE Contact Phone:	970-375-9509

Reply To:

Regulatory Division
US Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435

PROPOSED EMERGENCY REGIONAL GENERAL PERMIT UNDER SECTION 404 OF THE CLEAN WATER ACT (33 USC 1344)

Summary of Proposed Regional General Permit:

The U.S. Army Corps of Engineers, Albuquerque District, announces the draft Regional General Permit (RGP) to provide an expedited response to public agencies and private parties for necessary emergency repair and protection measures in waters of the United States. These activities would be authorized pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899, where there is a sudden, unexpected occurrence involving a clear and imminent threat to life or property (such as those situations that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately) demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. This proposed RGP may be accessed at <http://www.spa.usace.army.mil/reg/default.asp>. Prospective users of this permit should be cognizant of its terms and special conditions so as to avoid activities that would result in an enforcement action by the Government.

Location: In any jurisdictional waters of the United States throughout the Albuquerque District of the U.S. Army Corps of Engineers, including those parts of the States of Colorado, New Mexico, and Texas subject to regulatory review by this office. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

Expiration Date: The emergency Regional General Permit is proposed to expire on April 15, 2013. The reauthorization of this RGP in 2013 will depend in part on the degree to which users of this RGP (permittees) comply with the RGP's terms and conditions, and in

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particular, its reporting requirements.

Additional Information: Pursuant to 33 CFR Part 323.4(a)(2), the discharge of dredged or fill material that may result from the following activities is not prohibited by or otherwise subject to regulation under Section 404:

“Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.”

In addition, regulations at 33 CFR Part 323.4(c) state “[a]ny discharge of dredged or fill material into waters of the United States incidental to...” such maintenance activities...“must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.”

Note that activities conducted under this exemption may still be constrained by regulations of one or more other agencies. For example, U.S. Fish and Wildlife Service may require permits for the take of species listed as threatened or endangered under the federal Endangered Species Act. Also, the Colorado Department of Public Health, the New Mexico Environment Department, and the Texas Natural Resource Conservation Commission may require authorizations under state laws.

Furthermore, activities that result in the discharge of no more than incidental or de minimis fallback of excavated sediments are not regulated under Section 404 of the Clean Water Act. Such activities include the removal of accumulated material or debris from areas otherwise subject to Corps jurisdiction where the discharge is incidental to the primary activity of excavation by use of backhoes, excavators, suction dredges or similar equipment. Bulldozing and stockpiling of material to facilitate eventual excavation is regulated as a discharge of material if conducted within Corps jurisdiction and would require a Section 404 permit. Removal of vegetation by use of hand tools or certain mowers does not typically result in the discharge of fill material and is not regulated under the Clean Water Act, but bulldozing for vegetation removal would likely be regulated as well as disking of the substrate for weed control in certain circumstances.

Individuals who desire to conduct work within waters of the United States that they believe would qualify under the 404(f) exemptions or which would qualify as a non-regulated excavation activity with only incidental fallback are strongly advised to first coordinate their planned activities with the Corps of Engineers Regulatory staff.

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Comments: Any comments concerning this project should be received by the District Engineer no later than April 10, 2008. Comments received after the end of the Public Notice comment period will not be considered. However, more time may be given if a request, with a valid reason, is received prior to the suspense date. The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make the decision to issue the proposed Emergency RGP, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed below. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

To request additional information on the proposed Emergency Regional General Permit, please contact the following:

Deanna L. Cummings
Regulatory Division
Albuquerque District, Corps of Engineers
4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435
970-375-9509
Fax No. 505-342-3498 or 970-375-9531

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The evaluation of the impact of this activity will include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act. All factors relevant to the proposal and the cumulative effects will be considered; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

At the request of the Department of Public Safety, Emergency Management Preparedness, State Coordinator, we are sending a copy of this notice to the local flood plain administrator for their information. In accordance with 44 CFR Part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), participating communities are required to review all proposed development to determine if a flood plain development permit is required. The local Flood Plain Administrator is required to perform this review for all proposed development and maintain records of such review.

You may contact:

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Department of Public Safety
State Floodplain Coordinator
Attn: Mr. Bill Borthwick
email: wborthwick@dps.state.nm.us
Phone: 505-476-9617

State Reclamation Engineer
Attn: Mr. James Mirabal
Homepage: www.tnrcc.state.tx.us
Phone: 512-239-4771

If the District Engineer determines that the proposed Emergency RGP complies with the 404(b)(1) guidelines, he will issue the permit unless issuance would be contrary to the public interest.

Any person may request a public hearing. The request must be submitted, in writing, to the District Engineer within 15 days of the date of this notice and must clearly set forth the reasons for holding a public hearing.

B.A. Estok
Lieutenant Colonel, U.S. Army
District Commander

Enclosures

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