



**US Army Corps
of Engineers®**

Albuquerque District

Information Sheet

SECTION 404 PERMIT REQUIREMENTS FOR PLACER MINING IN THE ALBUQUERQUE DISTRICT (Effective April 1999)

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged and fill material into waters of the United States. Placer mining Section 404 discharge activities can include temporary dams, ramps, and stockpiles. Discharges of waste products from mining processing are regulated by the Environmental Protection Agency under Section 402 of the Clean Water Act.

Incidental fallback. Placer mining activities which involve only "incidental fallback" discharges are not regulated under Section 404 of the Clean Water Act due to a court decision in *American Mining Congress vs. Corps of Engineers*.

"Incidental fallback" activities include minimal minor disturbance at the point of excavation such as dredged material that falls from a shovel, bucket, or pan, or the movement of dredged material around the excavation device as the device is moved through the soil in its normal, routine use in lifting and removing sediment.

When a Section 404 permit is required for placer mining. If your placer operation involves an associated discharge of dredged or fill material into waters of the United States for cofferdams, diversion structures, work platforms, etc., a

Section 404 permit will be required. This type of work involves more than "incidental fallback" described above. One or more of the [nationwide permits \(33 CFR 330\)](#) may authorize your project. Please provide specific information about your project so that a determination of permit requirements can be made. If your work is performed under a nationwide permit, you must insure compliance with all terms and conditions of the permit, including submittal of a self-certification of compliance.

Each nationwide permit has terms and conditions which must be met for use. The Corps will provide detailed information about the permit in a written verification. An example includes:

- **Nationwide Permit No. 18** is available for discharges of dredged or fill materials into waters of the United States, including wetlands, for minor discharges. Small, one-time projects may be authorized under this permit. For discharges exceeding 10 cubic yards, or if the discharge is in a wetland, pre-construction notification is required in accordance with General Condition No. 27 of the permit. If the associated work cannot be authorized under a nationwide permit, an individual

permit will be required under Section 404. You should submit an application to the Corps for an individual permit at least 90 days prior to the time you intend to start the work. Your application should fully describe the associated structures and fills which will be temporarily or permanently constructed as part of your project. Please be specific when describing the location where you propose to work and your work methods.

Compliance with other laws. It is your responsibility to insure compliance with applicable laws and regulations, particularly those relating to property and mining rights.

Water quality certification. No work can be performed in any wetland, intermittent or perennial stream, or Outstanding National Resource Water of New Mexico under a nationwide permit until the permittee has notified the Surface Water Quality Bureau of the New Mexico Environment Department (NMED), and has received NMED approval of plans and specifications detailing how water quality standards will be attained. You may contact them at:

New Mexico Environment Department
Surface Water Quality Bureau
1190 St. Francis Drive, N2060
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
ph. (505) 827-0187 or (505) 827-0160

We advise you to check with NMED regarding water quality certification requirements for any work in a perennial stream whether or not you are using a nationwide permit.

ADDITIONAL INFORMATION

For additional information regarding nationwide permits or for a written determination for a specific project, please contact the office below:

In New Mexico:

Chief, Regulatory Branch
Albuquerque District, U.S. Army Corps of Engineers
4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435
Telephone: (505) 342-3262

In southeastern Colorado:

Southern Colorado Regulatory Office
200 South Santa Fe Ave. Suite 301
Pueblo, Colorado 81003
Telephone: (719) 543-9459

In southern New Mexico and western Texas:

EI Paso Regulatory Office
P.O. Box 6096
Ft. Bliss, Texas 79906-0096
Telephone: (915) 772-2784

Information about the U.S. Army Corps of Engineers regulatory program, including nationwide permits, may also be accessed on our Internet page:
<http://www.spa.usace.army.mil/reg/>