



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

December 22, 2022

Kelly Allen
Chief, Regulatory Division
Albuquerque District, U.S. Army Corps of Engineers
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435

RE: Clean Water Act Section 401 Water Quality Certification for the Reissuance of the U.S. Army Corps of Engineers, Albuquerque Regional General Permit (RGP) NM/West TX-17-01, for Emergency Repair and Protection Activities within the Albuquerque District

Dear Ms. Allen:

This water quality certification (WQC) applies to any potential point source discharges from potential projects authorized under the proposed reissuance of RGP NM/West TX-17-01 into waters of the United States that occur within tribal boundaries within the Albuquerque District.

Section 401(a)(1) of the Clean Water Act (CWA) requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. In this case, Jicarilla Apache Nation, Mescalero Apache Nation, Pueblo of Cochiti, Pueblo of Jemez, Pueblo of San Felipe, Pueblo of San Ildefonso, Santo Domingo Pueblo, Ysleta del Sur Pueblo, Zia Pueblo, and Zuni Pueblo do not have the authority to provide CWA Section 401 certification for discharges occurring within the boundaries of their tribal lands, therefore, EPA Region 6 is making the certification decisions for discharges that may result from the potential projects authorized under the proposed RGP NM/West TX-17-01. EPA Region 6 distributed emails to the aforementioned tribal partners on October 11 and November 14, 2022, informing them of the proposed reissuance and opportunity to provide input.

Reissuance of RGP NM/West TX-17-01 Description

The Corps is proposing to reissue its existing RGP NM/West TX-17-01 and associated conditions. The Corps informs that “this RGP is recognized by the Albuquerque District as a permitting mechanism that would allow for expedited review of proposed projects while ensuring compliance with all applicable federal regulations and conditions of the proposed RGP. Activities authorized by this RGP are limited to discharges of dredged or fill material that are the minimum necessary to alleviate an emergency situation and that would not result in more than minimal individual and cumulative adverse effects. Activities that would result in the loss of greater than 1/2-acre of waters of the United States cannot be authorized by this RGP.” Details on RGP NM/West TX-17-01 are found at:

<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Article/3213026/spa-2012-00347-public-notice-of-the-proposed-reissuance-of-regional-general-per/>

Work authorized by this RGP is limited to discharges of dredged or fill material into waters of the United States, including wetlands, and/or work in or affecting navigable waters of the United States, associated with an emergency situation. An “emergency situation” is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services.

General Information

The general information provided does not constitute a certification condition(s).

Project proponents for potential projects authorized under RGP NM/West TX-17-01 are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Project proponents for potential projects authorized under RGP NM/West TX-17-01 should conduct all work in such a manner as to comply with all Corps Section 404 permit conditions.

Copies of the Corps permit including this certification should be kept on the job site and readily available to the public for reference.

Project proponents for potential projects authorized under RGP NM/West TX-17-01 should retain this certification in their files as documentation of EPA certification. This certification is specifically associated with the proposed RGP NM/West TX-17-01 and expires five years from Corps issuance date.

During project planning, EPA highly recommends the permittee notify the appropriate tribal environmental office of the project details and location.

Certification Determination

Grant (121.7(c)):

On behalf of Jicarilla Apache Nation, Mescalero Apache Nation, Pueblo of Cochiti, Pueblo of Jemez, Pueblo of San Felipe, Pueblo of San Ildefonso, Santo Domingo Pueblo, Ysleta del Sur Pueblo, Zia Pueblo, and Zuni Pueblo, CWA Section 401 certification for RGP NM/West TX-17-01 is granted with no conditions. EPA Region 6 has determined that any discharge that could be authorized will comply with water quality requirements, as defined at 40 CFR 121.1(n).

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Should your office have any questions, please feel free to contact our staff: Brianna Wadley at 214-665-2723, Wadley.Brianna@epa.gov.

Sincerely,

Angela Restivo

Angela Restivo
Acting Director
Water Division