



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

U. S. Army Corps of Engineers  
Albuquerque District-Regulatory Division  
Attn: Daniel Delgado, Senior Regulatory Project Manager  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109

Subject: Clean Water Act Section 401 Certification for the U.S. Army Corps of Engineers  
Regional General Permit (RGP), Emergency Repair and Protection Activities on Navajo  
Nation Allotment Lands in New Mexico (U.S. EPA File No. 2022-499)

Dear Daniel Delgado,

The U.S. Environmental Protection Agency Region 9 (EPA) has responsibility under Section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits and licenses issued for work on Navajo Nation Allotment Lands in New Mexico (40 C.F.R 123.12(a)).

Per your certification request received on November 8, 2022, EPA has reviewed the U.S. Army Corps of Engineers (Corps) CWA Section 404, **Regional General Permit (RGP) NM/West TX-17-01, Emergency Repair and Protection Activities**, including the covered activities and conditions. EPA posted a public notice of the proposed 401 certification on the EPA Region 9 website from November 22 through December 23, 2022. No responses were received.

I hereby grant with conditions the enclosed water quality certification which include binding requirements for activities on Navajo Nation Allotment Lands in New Mexico and will remain in effect for the authorization period of the above referenced RGP. Please provide this certification to anyone contacting the Corps with applicable projects that may be authorized under this RGP. If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 9 at [R9cwa401@epa.gov](mailto:R9cwa401@epa.gov) for a project-specific certification or for any section 401 certification-related questions.

In accordance with the agency coordination requirements of the RGP, upon receipt of notification for activities covered under RGP 17-01, the Corps will immediately provide an electronic copy of the application to EPA and the Navajo Nation Environmental Protection Agency.

EPA appreciates our long-standing partnership and coordination in implementing Section 401 of the CWA. Should you have any questions, please contact Russell Huddleston, EPA Region 9 Wetlands and Oceans Section at (415) 972-3507, or [Huddleston.russell@epa.gov](mailto:Huddleston.russell@epa.gov).

Sincerely,

Tomás Torres  
Director, Water Division

Enclosure

cc: Patrick Antonio, Navajo Nation EPA

## **ENCLOSURE**

### **U.S. Environmental Protection Agency Region 9 Clean Water Act Section 401 Certification for the U.S. Army Corps of Engineers Regional General Permit NM/West TX-17-01, Emergency Repair and Protection Activities on Navajo Allotment Lands in New Mexico**

This Clean Water Act (CWA) Section 401 water quality certification (WQC) applies to any point source discharges from projects authorized under the re-issuance of the Regional General Permit (RGP) NM/West TX-17-01, Emergency Repair and Protection Activities, into waters of the U.S. that occur within Navajo Allottee land in New Mexico.

Section 401(a)(1) of the CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the United States, to obtain certification that any such 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 Region 9 (EPA) is the certifying authority. EPA is certifying with conditions the discharges associated with projects authorized under RGP NM/West TX-17-01.

#### **Scope of Authorized Activities:**

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 (i.e., a situation that could potentially result in an unacceptable hazard to life, a significant loss of property, or damage to essential public services if corrective action requiring a permit is not undertaken immediately). Activities authorized by the 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 are not authorized by the RGP.

#### **Activities Covered under the Emergency Regional Permit:**

Typical activities authorized under the RGP include, but are not limited to: bank stabilization (not to exceed 500-linear feet, unless this limit is waived by the Corps in writing); restoration of damaged areas; temporary fills for staging, access, and dewatering; repair, replacement, or rehabilitation of existing structures and/or fills (e.g. roads, bridges, utility pipelines and flood control structures, including attendant features, irrigation pumps or intakes, and other existing structures located in waters of the United States); construction or repair of fire/fuel breaks, debris and sediment containment structures, including erosion control basins (erosion control basins cannot be located within a perennial or intermittent stream); removal of accumulated debris and/or sediment (limited to restoring flow conveyance/channel geometry to pre-event dimensions), and other activities associated to emergency repair or protection situations.

Emergency Repair and Protection Activities authorized must comply with all requirements of the RGP including, but not limited to, soil erosion and sediment controls, suitable materials, inspection authorizations, removal of temporary fills, mitigation, management of water flows and aquatic life

movement. In addition, activities are required to comply with the following conditions of this CWA Section 401 certification.

### **Section 401 Certification Conditions**

Based on the draft RGP description, on behalf of the Navajo Nation, for Navajo Nation Allotment Lands in New Mexico, EPA Region 9 has determined that any discharge from the proposed projects authorized by the Regional General Permit (RGP NM/West TX-17-01, Emergency Repair and Protection Activities) will comply with water quality requirements, as defined at 40 CFR 121.1(n), subject to the following conditions pursuant to section 401(d):

**Condition 1:** Project proponents are not covered by this certification if they are seeking authorization under this RGP for bank stabilization projects where the project proponent obtains a waiver of the 500 linear foot limit from the Corps. If a project proponent expects to exceed the 500 linear foot limit for bank stabilization projects and requests a waiver of that limit from the Corps, the project proponent shall submit a project-specific certification request to EPA Region 9.

**Why the condition is necessary to assure that any discharge will comply with water quality requirements:** This limit ensures that the activities authorized under this RGP do not result in more than minimal adverse environmental effects by degrading water quality. As a result of this condition, the projects receiving a waiver to exceed the RGP limit will need to seek a project-specific water quality certification. In the certification request, EPA will receive additional information about the local environmental context and the project details which will provide EPA the opportunity to determine whether the specific project will comply with the applicable water quality requirements.

**Citation: 40 CFR 230.10(d); 40 CFR § 230.70; 40 CFR § 230.71; 40 CFR § 230.74**

**Condition 2:** The project proponent shall:

- Not allow debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes to enter into waters of the U.S., and shall not store these materials within 50 feet of where it may enter into waters of the U.S.
- Clean all equipment of excess dirt and debris in a decontamination area away from the project site prior to arriving on site. Project proponent shall inspect all equipment daily and prior to entering any waters of the U.S., for oil, gas, diesel, antifreeze, hydraulic fluid, and other petroleum leaks. Project proponent shall promptly repair all equipment detected with leaks or move the equipment offsite within 24 hours of leak detection.
- Place and secure containment booms and/or absorbent material onsite prior to beginning work. In the case of spills, project proponent shall immediately employ containment booms and/or absorbent materials to prevent discharges from reaching waters of the U.S.

If spills or unauthorized discharges occur during the project, the project proponent shall notify EPA Region 9 at [Huddleston.russell@epa.gov](mailto:Huddleston.russell@epa.gov) within 6 hours of discovery. As part of the notice, the project proponent shall provide photographs and a written plan for remediating the spill or unauthorized discharge. For emergencies or after hours, call the EPA emergency spill response at 1-800-424-8802.

**Why the condition is necessary to assure that any discharge will comply with water quality requirements:** The condition is necessary to prevent the unauthorized release of pollutants into waters of the United States. This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project.

The condition allows for containment and clean-up of potential spills before entering waters. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species.

**Citation: 40 CFR 230.10(d); 40 CFR 230.71; 40 CFR 230.74.**

**Condition 3:** If a proposed structure or fill in waters of the United States requires dewatering activities, prior to performing any in-water activities, a project proponent seeking authorization under this RGP shall submit a dewatering plan to EPA Region 9 for concurrence. If a project proponent does not receive a response from EPA Region 9 within 3 days of submission of the plan, the project proponent may proceed with dewatering activities per the dewatering plan. If EPA identifies a missing component(s) of the dewatering plan within 3 days of submission, the project proponent may not proceed until all components outlined below have been provided to EPA Region 9. Unless the activity has an approved dewatering plan, the project proponent shall conduct work when there is no water present in the stream channel.

The Dewatering Plan shall include descriptions of the following:

- Method for pre-disturbance assessment/measurement (including photo-documentation) and post-construction restoration of the pre-construction contours and site conditions of the waters of the U.S. affected by the structure or fill.
- In the dewatering plan, the project proponent shall describe the restoration success criteria based on the pre-construction assessment and anticipated timeline for achieving the site restoration.
- Reporting to EPA (including photo-documentation) and adaptive management processes if any of the dewatering methods cause erosion or if unauthorized discharges occur before the site restoration activity has met the restoration success criteria identified in the plan.
- Methods for dewatering.
- Equipment that would be used to conduct the dewatering.
- Timing, including length of time the area is to be dewatered.
- Area (acres) and length (linear feet) in waters of the U.S. of the structure and/or fill used for the dewatering.
- Method for removal of the temporary structures and/or fill.
- Frequency and methods for monitoring and maintenance of dewatering measures to ensure unauthorized discharges do not occur before the site restoration is complete.
- At a minimum, all dewatering measures should be assessed within 24 hours after a rain event and any damaged measures shall be repaired or modified as required to protect water quality.

**Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:** Emergency repair and protection activities may occur while stream channels have flowing or standing water and the RGP does not address dewatering activities. Dewatering activities can often be a point source for pollutants entering waters of the United States. This condition is necessary to ensure that the authorized activity does not result in more than minimal degradation to water quality and the aquatic environment because the project proponent will complete pre-planning, monitoring, maintenance, reporting and adaptive management to achieve site restoration.

**Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.70; 40 CFR § 230.71; 40 CFR § 230.74**

**Condition 4:** The project proponent shall refer to precipitation forecasts when scheduling construction activities; the project proponent shall monitor the 72-hour forecast from the National Weather Service at

<http://www.nws.noaa.gov>. If there is a forecast of more than 80% chance of rain, or at the onset of unanticipated precipitation that could result in flows, the project proponent shall:

- Cease all project activities within the waters of the U.S.
- Remove all equipment from waters of the U.S.
- Monitor temporary erosion and sediment control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw bales, etc.) for unauthorized discharges. Within 24 hours after the conclusion of each rain event, the project proponent shall inspect all temporary erosion and sediment control measures and ensure all measures are repaired or modified if unauthorized discharges are occurring or did occur. Work may resume once the area is dry.

**Why the condition is necessary to assure that any discharge will comply with water quality requirements:** This measure is included to ensure that work activities minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem. Heavy equipment working in wet soils and soil disturbance when water is present significantly increases turbidity and sediment transport and the potential for more severe erosion.

**Citation: 40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.74.**