



RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION

December 27, 2022

U.S. Army Corps of Engineers
Albuquerque District Regulatory Division
Daniel Delgado, Corps Regulatory Project Manager, Daniel.i.Delgado@usace.army.mil
Reid Riley, Corps Regulatory Specialist, Reid.A.Riley@usace.army.mil

Re: Water Quality Certification, Reissuance of Regional General Permit NM/West TX-17-01,
Emergency Repair and Protection Activities, SPA-2012-00347

The Railroad Commission of Texas (Commission) received a request on November 8, 2022, from the Army Corps of Engineers (USACE) Albuquerque District for water quality certification of the referenced regional general permit (RGP). The request included information that addressed the required elements of a completed water quality certification request, as outlined in 40 CFR 121.5(c).

The RGP is applicable to all waters of the U.S. (WOTUS), including navigable waters, subject to regulatory review by the Albuquerque District, Regulatory Division, within New Mexico, Texas, and the Navajo Nation within New Mexico, Arizona, and Utah.

Work authorized by this RGP is limited to discharges of dredged or fill material into WOTUS, including wetlands, and/or work in or affecting navigable WOTUS, 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 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 WOTUS cannot be authorized by this RGP.

Permanent or temporary work or structures in navigable WOTUS, and/or the permanent or temporary discharge of dredged and/or fill material into WOTUS for repair or protection activities for which this office has determined that an emergency situation exists as defined by this RGP.

Projects beyond the scope and timing of this emergency permit must be authorized using the appropriate general permit or individual permit. Impacts to WOTUS must be avoided or minimized through the use of practicable alternatives. Compensatory mitigation for unavoidable adverse impacts to WOTUS may be required.

The applicant would be required to notify USACE as early as possible and may not begin the activity until USACE provides written authorization that the activity may proceed under this RGP with any site-specific special conditions imposed by USACE.

The permittee must comply with the following general conditions, in addition to any project specific special conditions imposed by USACE:

- Projects authorized under this RGP must be initiated within seven days of receiving written verification from USACE, unless approved by the USACE.
- The activity must comply with any case-specific special conditions included in the written USACE verification.
- USACE may authorize activities under this RGP only after it is determined that the impacts to critical resource waters will be no more than minimal. If USACE identifies a critical resource water at the project site, USACE will notify all appropriate agencies and initiate consultation as necessary.
- Upon receipt of notification, USACE will immediately provide an electronic copy to appropriate agencies, including the Railroad Commission of Texas. These agencies will be requested to advise the USACE Regulatory Project Manager, as expeditiously as possible, whether they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided, USACE will provide an opportunity for comments and will fully consider any agency comments received within the specified timeframe concerning the proposed activity's impacts and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.
- Discharges of dredged or fill material into WUS must be avoided or minimized to the maximum extent practicable. Compensation for unavoidable discharges into WOTUS may be required in accordance with the Mitigation Rule (33 CFR 332).
- The applicant must make every effort to ensure any material dredged or excavated from WOTUS is not redeposited into WOTUS via runoff or overflow from a contained land disposal area. When feasible, erosion and sedimentation controls, such as siltation or turbidity curtains, sedimentation basins, straw bales/waddles, or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the

proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high-water mark, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or sedimentation.

- When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize wetland disturbance.
- Use of materials deemed unsuitable by the USACE as fill or bank stabilization material is prohibited. Broken concrete may not be used unless the applicant demonstrates that its use is the only practicable material. Material used for construction or discharged must be free from toxic pollutants in toxic amounts.
- No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
- The applicant must avoid activities in spawning areas during spawning seasons to the maximum extent practicable. Activities that result in the physical destruction of an important spawning area are not authorized.
- No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for the repair of the public water supply intake structures or adjacent bank stabilization.
- This RGP does not authorize the blockage or filling of an existing stream meander. Stream channelization is prohibited, except for minor channelization or alignments in the vicinity of stream crossings.
- To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, to the maximum extent practical, unless the primary purpose of the activity is to impound water or manage high flows.
- If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

- Any structure or fill authorized by this RGP shall be maintained; including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property. In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with the permittee and the appropriate Federal and State agencies.
- Temporary fills shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated, as necessary, with appropriate vegetation common to the area.
- Rooted vegetation removal must be authorized in advance by USACE and shall be limited to that which is necessary to allow passage of expected high flows through a structure's inlet.
- The permittee must comply with all Federal, State, and local applicable regulations and ordinances.

Based on past history, the USACE estimated that future use of this RGP may range between two and five authorizations to discharge per permit year.

Based on my review of the application, there is reasonable assurance that the activities under this permit, if conducted in the manner described and in accordance with applicable state and federal regulations, will not cause a violation of applicable water quality requirements. Certification of the referenced application is hereby issued.

Please call me at (512) 463-7308 if you have any questions.

Sincerely,

Leslie Savage

Leslie Savage, P.G., Chief Geologist
Oil and Gas Division