



# Excavation Activities within Waters of the U.S.

U.S. ARMY CORPS OF ENGINEERS  
ALBUQUERQUE DISTRICT

BUILDING STRONG®

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The U.S. Army Corps of Engineers (Corps) is tasked with protecting our Nations waters (i.e. Waters of the United States) under Section 404 of the Clean Water Act (CWA). Section 404 of the CWA provides the Corps federal authority to regulate the discharge of dredged or fill into waters of the United States, including wetlands. As such, activities that would result in the discharge of dredged or fill material into waters of the United States (for example: arroyos, streams, creeks, rivers, ponds, lakes, wetlands, etc.), in most cases, require Corps authorization prior to such discharge. Activities conducted within waters of the United States that do not result in the discharge of dredged or fill material do not require Corps authorization prior to work. An example of these types of activities includes excavation and removal of debris from a water of the United States using an excavator and placing the material immediately into a truck to be hauled to an upland disposal site.

Excavation activities that only result in *incidental fallback* (defined as: the incidental soil movement from excavation, such as the soil that is disturbed when dirt is shoveled, or back-spill that comes off a bucket and falls into the same place from which it was removed), **do not** require Corps authorization prior to conducting the activity [33 CFR 323.2 (d)(3)(i)]. Activities that involve mechanized land clearing, ditching (not associated to irrigation ditches), channelizing, grading, or other excavation activities that result in a discharge of dredged material **do** require a permit from the Corps, unless the person demonstrates to the satisfaction of the Corps, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States [33 CFR 323.2 (d)(3)(i)].

Excavated material **shall not** be temporally or permanently placed (i.e. discharged) into waters of the United States without first obtaining Corps authorization. To protect water quality, it is recommended that best management practices such as, straw filter socks, sediment fences, or other sediment control methods be installed around excavated material stockpiles when located near a water of the United States. Use of a bulldozer, grader, or other similar equipment for the removal or relocation of material within waters of the U.S. would require authorization from the Corps prior to conducting such activity as these methods would result in a discharge of dredged material.

Removal of logs resting on the surface of a streambed would not require authorization from the Corps if the activity does not result in land disturbance. Removal of imbedded or buried logs from within waters of the United States may constitute a discharge of dredged material and may require Corps authorization. Above ground removal or cutting (for example: mowing, chain sawing, etc.) of vegetation within waters of the U.S. would not require Corps authorization [33 CFR 323.2

(d)(2)(ii)]. However, mechanically (i.e. using heavy machinery) removing the entire plant and root wad within a water of the United States, including wetlands, may require Corps authorization since this type of activity could result in significant soil disturbance.

Maintenance activities, including emergency maintenance, of structures within waters of the U.S. would not require a Corps permit if the activity does not change the character, scope, or size of the original fill area of the structure. This type of activity would be considered exempt from Section 404 regulations as outlined in 33 CFR 323.4 (a)(2). We recommend that you contact our office to confirm the proposed project meets the exemption prior to beginning work.

Certain activities may not fit the categories mentioned above. To address emergency activities that would require Corps authorization, the Corps Albuquerque District has implemented emergency permitting procedures in the event of emergency permit actions, which can be found at:

<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Emergency-Permitting/>. These procedures include the use of emergency permitting mechanisms such as, Regional General Permit NM/West TX-17-01, Emergency Repair and Protection Activities, which could be used in the event of an emergency permitting situation as defined by our regulations. In such cases, permitting actions would be expedited. Please also see our Wildfire Resources and Emergency Permitting Procedures at: <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Wildfires/>.

We recommend you contact our office to confirm permitting requirements prior to starting work associated to any of the activities mentioned above. If you have any questions regarding this information, please contact our office:

Regulatory Mainline: (505) 342-3280, Email: [CESPA-RD-NM@usace.army.mil](mailto:CESPA-RD-NM@usace.army.mil)

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**ALBUQUERQUE DISTRICT, U.S. ARMY CORPS OF ENGINEERS**  
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