



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

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT NUMBER NM-12-01
FOR
REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS**

SPONSOR AND ISSUING OFFICE: U.S. Army Corps of Engineers, Albuquerque District

PERMIT NUMBER: Regional General Permit (RGP) No. NM-12-01 (Corps File No. SPA-2012-00347-ABQ)

ISSUANCE DATE: TBD

PERMITTEE: Public agencies, businesses, or private parties (i.e., the public in general)

Note: The term "you" and its derivatives, as used in this permit, means the permittee. The term "this office" refers to the Albuquerque District office of the Corps of Engineers, which has jurisdiction over the permitted activity, or the appropriate official of this office acting under the authority of the commanding officer.

After you receive written approval that your project complies with the terms and conditions of this RGP NM-12-01 from this office, you are authorized to perform work in accordance with the General Conditions and any project-specific conditions.

PROJECT DESCRIPTION: This permit authorizes discharges of dredged or fill material into Waters of the United States, including wetlands, and/or work or structures in Navigable Waters of the United States for necessary repair and protection measures 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 or a significant loss of property if corrective action requiring a permit is not undertaken immediately). Examples of work that maybe undertaken under this permit, upon authorization by the District Engineer (DE), include but are not limited to:

- Levee construction, rebuilding or maintenance.
- Removal of accumulated sediment, debris or vegetation to prevent or mitigate the emergency situation.
- Bank stabilization to prevent or minimize erosion or the loss of structures such as bridges.
- Debris containment structures.
- Construction of diversion channels and flow deflection structures.

PROJECT LOCATION: Within those parts of the State of New Mexico within the boundaries of the Albuquerque District Regulatory Branch. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

GENERAL CONDITIONS OF THIS RGP:

1. **Time Period Covered:** Individual projects authorized under this permit must be completed within the timeframe approved in the authorization. This general permit will be effective through **TBD, 2017**; however eligible projects authorized under this general permit must be completed by the time specified in the approval notification. The reauthorization of this RGP in 2017 will be based on the permit's usefulness and an evaluation of the impacts that were authorized.
2. **Notification/Communication:**
 - a. **Timing:** The applicant must notify the DE as early as possible and shall not begin the activity until notified by the DE provides written authorization that the activity may proceed under this RGP with any site-specific special conditions imposed by the District or Division Engineer. The Corps recognizes there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed from the DE. It is not the intention of this permit to allow threats to life or property to remain unaddressed. If an applicant chooses to proceed without notice to proceed from the DE, the applicant must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.
 - i. Notification should be sent to:
Attn: NM/TX Branch Chief via fax at 505-342-3678 or mail at:
U.S. Army Corps of Engineers
Albuquerque District
Regulatory Division, CESPA-RD
4101 Jefferson Plaza NE
Albuquerque, NM 87109
 - b. **Contents of Notification:** The notification should be in writing and include the following information:
 - (1) Applicant's name, address, and telephone number, and contact information for the owner of the affected land.
 - (2) A written description of the proposed work including:
 - (a) The purpose and need
 - (b) A description of waters of the United States that may be affected by the activities
 - (c) Type, composition, and quantity of material to be excavated or placed (including temporary material used for cofferdams, etc)
 - (d) Length, width, and depth of fill area and/or excavation area
 - (e) A discussion of the direct and indirect adverse environmental effects of the activity
 - (f) Location of disposal site for excavated material

- (g) Type of equipment to be used
 - (h) Identification/delineation of wetlands
 - (i) The receiving site for excess water (drainage projects)
 - (j) Any other pertinent, supporting data
 - (3) A location map indicating the location of the proposed work and a legal description (section, township, range, and county, latitude and longitude).
 - (4) A set of 8.5 by 11-inch drawings showing the details of the proposed work (plan and cross-sectional views showing elevations and dimensions).
 - (5) If applicable, a compensatory mitigation plan for proposed wetland and/or stream fill or drainage activities.
 - (6) A written statement that you agree to abide by the terms and conditions of this permit.
- c. **Form of Notification:** Nationwide Permit Pre-Construction Notification (PCN) Form, available from the District's website at:
[http://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/NWP%20PCN%20Fillable%20Checklist-%20FINAL%20\(2\).pdf](http://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/NWP%20PCN%20Fillable%20Checklist-%20FINAL%20(2).pdf) may be used as the notification and must include all of the information required in General Condition 2.b. Items (1)-(6) above. A letter or facsimile transmission may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with this office, a message shall be left on voice mail or an e-mail message shall be sent. Again, those messages should include the information identified in General Condition 2.b. Items (1)-(6) above. Formal written notification should be sent to this office as soon as possible.
- d. **Agency Coordination:** Upon receipt of a Pre-Construction Notification (PCN) the DE will immediately provide (i.e., by electronic mail, facsimile transmission, overnight mail or other expeditious manner) a copy to the offices of the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the appropriate tribal entity, the New Mexico Environment Department (NMED), the New Mexico Department of Game and Fish (NMGF), and the New Mexico State Historic Preservation Office (SHPO). These agencies and tribes will be requested to telephone, electronic mail or facsimile transmit to the Corps Regulatory Branch Project Manager, as expeditiously as possible, a response indicating whether or not they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency or tribal representative, the DE will allow them to provide their comments in a short timeframe determined by the DE on a case-by-case basis to avoid likely loss of life or property before making a decision on the proposed project.
- The DE will fully consider any agency comments received within the specified timeframe concerning the proposed activity's compliance with the conditions of their authority and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will indicate the results of that consideration in the administrative record associated with the notification and will provide an informal response to the commenting agency by electronic mail, facsimile transmission or other means.

- e. **Mitigation:** Discharges of dredged or fill material into Waters of the United States must be avoided or minimized to the maximum extent practicable at the project site.

Compensation for unavoidable discharge of fill materials may require appropriate mitigation measures. Factors that the DE will consider when determining the suitability of appropriate and practicable mitigation will include, but are not limited to:

- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.
- (2) The permanence of the project's impacts on the resource; and
- (3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purpose. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using bioremediation techniques in conjunction with other methods to offset project impacts.

- f. **District Engineer's Decision:** In reviewing the notification for the proposed activity, the DE will determine whether the activity would likely result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above.) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant and include any situation-specific conditions deemed necessary.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve the mitigation proposal after the work is approved and project work has commenced.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant either:

- (1) That the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit or other general permit, or
- (2) That the project is authorized under this RGP subject to the applicant submitting a mitigation proposal that would reduce the adverse effects to the minimal level. It may be acceptable to start work before a mitigation plan is approved. Such determinations will be made case-by-case, based on the urgency of the situation under review.

3. **Authorized Work:** Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction only results in very minor additional impact to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment. The RGP may NOT be used to upgrade an existing structure when that activity would result in additional adverse effects on aquatic resources. Such upgrade projects are considered separate activities for which other forms of authorization will be required.

Work not described in permit application documentation but deemed necessary after a field assessment is not authorized unless coordinated with the Regulatory project manager and acknowledged by appropriate means in writing (i.e., electronic mail or facsimile transmission, memo to the record, etc.). These coordinated permit modifications must also be described in sufficient detail in the post-project report (see General Condition 26). This RGP also does not authorize work required by property owners as *quid pro quo* for access through private or public property where such access is contingent upon work conducted by the permittee in waters of the U.S. for the benefit of the property owner. This is absolutely inappropriate and such additional activities are violations of Section 404 of the Clean Water Act unless previously authorized. If a local agency needs to acquire such access from an otherwise uncooperative property owner, existing condemnation procedures should be utilized to acquire the temporary access or permanent easement.

4. **Start Work Date:** Any projects authorized under this RGP must be initiated within seven (7) days of receiving authorization to proceed. Projects that cannot be initiated within this immediate timeframe generally would not meet the definition of an “emergency.” If the project start time can be delayed for more than a week, the imminent threat of impending loss may have diminished in magnitude as well as immediacy. However, there may be limited circumstances where, after notice to and input by the agencies, logistical considerations necessitate an extension of between 1 and 7 days. Further, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known to the applicant but for which an application was not submitted in a timely manner. That is, the applicant's failure to act in a timely manner prior to the emergency event will not obligate the Corps or other agencies to authorize work because of a self-described emergency situation unless the agencies agree that the situation qualifies as an emergency as defined in this RGP .
5. **Access to Site:** You must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.
6. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
7. **Water Quality Certification:**

For Permittees on Non-tribal Land: RESERVED

For Permittees on Tribal Lands: RESERVED

8. **Endangered Species:** No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat as identified under the Federal Endangered Species Act (ESA). Authorization of an activity by the RGP does NOT authorize the "take" of a listed threatened or endangered species, as defined under the Federal ESA. The U.S. Fish and Wildlife Service may provide project-specific recommendations to avoid or minimize potential take of listed species or adverse modification of designated critical habitat. The Corps will determine the degree to which the recommendations would be incorporated into the emergency authorization.

Information on the location of listed or proposed threatened or endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or from their website at <http://www.fws.gov/endangered/>

9. **Historic Properties:** Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted because of actions authorized under this RGP, the permittee shall provide a full report of the action and the impacts incurred by the resource to this office within 45 days after completion of the action. The Corps, the SHPO and/or the Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed.

If the permittee discovers any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, you must immediately notify the Corps Regulatory Branch who will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

10. **Regional and Case-by-Case Conditions:** The activity must comply with any regional conditions added by the Division Engineer (see CFR Part 330.4(e)) and with any case-specific conditions added by the District Engineer.
11. **Erosion and Siltation Controls:** Every effort must be made to ensure any material dredged or excavated from Waters of the United States is not likely to be washed back into any Waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw bales 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 or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.
12. **Equipment:** 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 soil disturbance, such as use of wide-treaded equipment or floatation devices.

13. **Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act)
14. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while that river is in an official study status, unless the appropriate Federal agency with direct management responsibility for that river has determined in writing that the proposed activity would not adversely effect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., U.S. Fish and Wildlife Service, National Park Service, USDA Forest Service, Bureau of Land Management). As of the date this permit is issued, the only designated Wild and Scenic River systems in the Albuquerque District are the Rio Grande segment extending from the Colorado state line downstream approximately 68 miles to the west section line of Section 15, T23N, R10E and the lower four miles of the Red River; The East Fork of the Jemez River from the Santa Fe National Forest boundary to its confluence with the Rio San Antonio; The Pecos River from its headwaters to the town site of Tererro; and the Rio Chama from El Vado Ranch launch site (immediately south of El Vado Dam) downstream 24.6 miles. Updated information is available at <http://www.rivers.gov/wildriverslist.html>
15. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Culverts placed in streams must be installed to maintain low flow conditions.
16. **Spawning Areas:** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
17. **Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
18. **Navigation:** No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. The permittee shall agree that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expenses to the United States. No claim shall be made against the United States on account of any such removal or alteration.
19. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

20. **Obstruction of High Flows:** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing river plain (unless the primary purpose of the fill is to impound waters).
21. **Adverse Effects from Impoundments:** 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.
22. **Proper Maintenance:** 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 you and the appropriate Federal and State agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season (i.e., maintenance of temporary levees is not authorized after the storm season in which the need arose).
23. **Removal of Temporary Fills:** Temporary fills shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such a temporary fill is considered likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, you will not be required to do so.
24. **Post-Activity Reports:** The permittee shall provide a concise written report to this office as soon as practicable (within 45 days of completing the project) after completion of any action conducted under this RGP. **PROVIDING THIS REPORT IS MANDATORY.** This office has additional responsibilities pursuant to consultation with the FWS under Section 7 of the ESA. Further, these reports enable the Corps to track the use of this RGP to verify that the minimal effects determination is being met as required by Section 404(e) of the CWA. Failure to provide timely reports following responses to emergencies is non-compliance with the General Conditions of this RGP and would be considered a violation (33 CFR Part 326.4(d)). In situations where there are multiple projects being implemented in an area by a permittee, the permittee may consolidate reporting into a single comprehensive report.

At a minimum the Report shall include any changes to the information provided in the original PCN and the following:

- I. Photos
 - (a) Pre and post-construction (date and location)
- II. As-built drawings (if required)
- III. Statement confirming that all general and special conditions were followed
- IV. Mitigation Plan (if deferred due to urgency of the proposed project)

FURTHER INFORMATION:

1. **Congressional Authorities:** Activities conducted under this RGP are authorized pursuant to:
 - (X) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. **Limits of authorization under RGP #**
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. **Limits of Federal Liability:** In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reliance on Applicant's Data:** The determination of this office that provision of permit verification under this RGP is not contrary to the public interest was made in reliance on the information provided by the permittee.
5. **Reevaluation of Permit Decision:** This office may reevaluate its decision to issue this RGP, or on the verification that any particular activity qualifies for this RGP, at any time circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. Failure to comply with the terms and conditions of this permit.
 - b. The information provided in support of the permit verification request or after-action report proves to be false, incomplete, or inaccurate. See Item 4 above.
 - c. Significant new information becomes available which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring compliance with the terms and conditions of this permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office. If the permittee fails to comply with such directive, this office may, in certain situations (such as

those specified in 33 CFR 209.170), accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

ALLAN E. STEINLE
Chief, Regulatory Division

DATE