



**US Army Corps
of Engineers®**
Albuquerque District

**Regional General Permit, NM/West TX 17-01, Emergency
Repair and Protection Activities**

Action No.: SPA-2012-00347-ABQ
Action Title: RGP NM/WEST TX-17-01
Applicable Area: New Mexico and the area of West
Texas within the Albuquerque District
Effective Date: June 14, 2017

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT
NM/WEST TX-17-01
FOR EMERGENCY REPAIR AND PROTECTION ACTIVITIES**

EFFECTIVE DATE: June 14, 2017

EXPIRATION DATE: June 14, 2022

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

PERMIT NUMBER AND NAME: (Corps Action No. SPA-2012-00347-ABQ), Regional General Permit (RGP) NM/WEST TX-17-01, Emergency Repair and Protection Activities.

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.

LOCATION: This RGP is applicable to jurisdictional waters located within the geographical boundaries of the Albuquerque District in New Mexico and West Texas.

Scope of Authorized Activities: Work authorized by this RGP is limited to discharges of dredged or fill material associated with an emergency situation in waters of the U.S. 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).

Activities authorized by this RGP are limited to discharges of dredged or fill material that are the minimum necessary to alleviate an emergency situation.

This RGP does not authorize long-planned-for projects, nor does it authorize 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 under this RGP.

Note: The limited scope of this permit is necessary to ensure that the expedited agency coordination procedures in General Condition 4 are only employed to address true emergencies that could not have been planned for and mitigated in advance. Projects or impacts known in advance to the applicant require full agency coordination as required by 33 CFR 320-332.

The Categories of activities that may be authorized by this RGP are as follows:

- **Category A:** Use of stream source dredged borrow material for levee maintenance or levee reconstruction on ephemeral and intermittent channels under the following circumstances:
 - Category A is limited to maintenance or reconstruction of existing non-engineered “push-up” levees.
 - Increasing the height of existing levees is not authorized by this Regional General Permit.
 - Category A does not authorize borrow activity in streams that have not previously been used for this purpose.
 - Locating levees below the ordinary high water mark or in wetlands is not authorized.
 - Channel widening is not authorized by this Regional General Permit.
- **Category B:** Removal of accumulated sediment, debris or vegetation to prevent or mitigate the emergency situation. Sediment removal activities are limited to restoring flow conveyance/channel geometry to pre-event dimensions. Category B also includes regulated discharges associated with removal of trash and flood-deposited uprooted woody and herbaceous vegetation, including fallen trees. Category B activities are limited to an area of less than 3 acres of waters of the U.S. unless this limit is waived in advance of construction and in writing by the Corps.
- **Category C:** Bank stabilization to prevent or minimize erosion or the loss of structures. Category C activities are limited to 500-linear feet of bank stabilization unless this limit is waived in advance of construction in writing by the Corps.
- **Category D:** Debris and sediment containment structures, including erosion control basins. Constructed basins must be located outside of perennial and intermittent waters, and may be located in ephemeral tributaries to such waters. A written waiver may be requested for construction in intermittent waters prior to construction. Maintenance of the containment structure and removal of collected debris and sediment to an upland site are also authorized by this permit.
- **Category E:** Construction of temporary diversion channels, flow deflection structures and temporary access roads that are necessary to construct projects described above.

- **Category F:** Other projects including but not limited to repair and reconstruction of existing roads; repair and protection of underground utilities; and protection and restoration of intake/outfall structures.

Projects that are beyond the scope and timing of this emergency permit should be authorized using the appropriate general or individual permit. Impacts to waters of the U.S., including wetlands, shall be avoided or minimized through the use of practicable alternatives. Compensatory mitigation for unavoidable adverse impacts to waters of the U.S. may be required.

NOTIFICATION AND APPROVAL PROCEDURES: The applicant must notify the Corps as early as possible and shall not begin the activity until the Corps provides written authorization that the activity may proceed under this RGP with any site-specific special conditions imposed by the Corps. The Corps recognizes there may be situations where imminent threats to life or property occur and the applicant has not received authorization to proceed from the Corps. It is not the intention of this permit to require threats to life or property to remain unaddressed. If an applicant chooses to proceed without prior authorization from the Corps, the applicant must ensure that notice of such a unilateral decision to proceed is made to this office by telephone or e-mail within 24 hours, and those messages should include the information identified in items 1 and 2 below. Formal written notification requesting after-the fact authorization must be sent to this office within 7 working days. **Electronic notification by email is preferred.** Notification should be provided to the NM/TX Branch Chief at:

SPA-RD-NM@usace.army.mil OR
U.S. Army Corps of Engineers Albuquerque District
Regulatory Division
4101 Jefferson Plaza NE
Albuquerque, NM 87109
505-342-3678

Contents of Notification: The notification should be in writing and include the following information:

1. Name, address and telephone number of the person(s) responsible for the work, the owner of the affected lands (if different from the permittee), and the contractor(s) that will be performing the work, if applicable;
2. A description of the proposed work including:
 - a. Purpose and need - describe nature of emergency that makes use of this RGP necessary and why such actions were not anticipated earlier.
 - 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 (if present).

- 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, NAD 83 UTM coordinates or 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). In situations where detailed plans are not available prior to construction, conceptual/as-built plans may be submitted with project notification. Detailed plans however, are required after-the-fact with the post-activity report.
5. Pre-construction photos depicting the physical setting (to be compared to post-construction site conditions from the same photo points). Photos should contain figure labels with time, date, bearing, and a general description of the site.
6. A compensatory mitigation plan for permanent impacts that exceed 0.1 acres.
7. A written statement that the permittee agrees to abide by the terms and conditions of this permit.

The notification must clearly describe the project so that the Corps can determine whether or not the work complies with the terms and conditions of the RGP.

After reviewing the notification and determining that the proposed work complies with the terms and conditions of the RGP, the Corps will verify in writing that the project as described meets the terms and conditions of this RGP. If the District Engineer determines that the proposed work does not meet the terms and conditions of this RGP or that it does not fall within the intended scope of this RGP, the Corps may provide written verification under one or more nationwide permits or other regional general permits or determine that the work is exempt from regulation under Section 404(f)(1) of the Clean Water Act.

For any activity that the Corps determines to have more than minimal environmental effects individually or cumulatively, or that may be contrary to the public interest, a standard individual permit may be required.

Concurrent Notification to the New Mexico Environment Department (NMED):

NMED Contact Information:

Program Manager
Watershed Protection Section
Surface Water Quality Bureau
New Mexico Environment Department
PO Box 5469
Santa Fe, NM 87502-5469
(505) 827-2793

For projects in which the New Mexico Environment Department (NMED) is the Clean Water Act Section 401 water quality certifying agency, the applicant must concurrently provide a copy of the notification directly to the NMED Surface Water Quality Bureau, and obtain certification as applicable. A copy of NMED's certification must be provided to the Corps.

GENERAL CONDITIONS OF THIS RGP: To qualify for this RGP, the permittee must comply with the following general conditions (GC), in addition to any project specific special conditions imposed by the Corps:

1. **Timing of Projects:** Projects authorized under this RGP must be *initiated* within seven (7) days of receiving written verification from the Corps. Projects that cannot be initiated within this immediate timeframe generally would not meet the definition of an “emergency situation”. 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, and other permitting authorities may be more appropriate. However, there may be limited circumstances where after coordination with other agencies, the Corps determines that there are logistical considerations that necessitate an extension of between 1 and 7 days.

The time limit for *completing* the work authorized by this RGP is 45 days from the date of permit verification, unless otherwise specified in the Corps verification letter. If additional time is required to complete the authorized activity, a written request for a time extension, including justification for the request, must be submitted to the Corps at least 10 days prior to the expiration of the verification.

2. **Special Conditions:** The activity must comply with any case-specific special conditions included in the written Corps verification.

3. **Critical Resource Waters:** The Corps 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 the Corps identifies a critical resource water at the project site, the Corps will notify all appropriate agencies and initiate consultation as necessary.

4. **Agency Coordination:** Upon receipt of notification the Corps will immediately provide an electronic copy to appropriate agencies, which may include the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the appropriate tribal entity, NMED, the New Mexico Department of Game and Fish (NMGF), and the New Mexico State Historic Preservation Office (SHPO), the TCEQ, Texas Railroad Commission (TRRC), the Texas Parks and Wildlife Division (TPWD) and the Texas Historic Commission (THC). These agencies will be requested to communicate to the Corps Regulatory 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 Corps will provide an opportunity for comments. Due to the emergency nature of the projects being reviewed, comments will be requested within a 3 day review timeframe, which may be extended by request to 5 days if circumstances warrant such extension. If the Corps does not receive a response from agencies within the specified timeframe, the Corps will proceed with its authorization. If there are substantive changes to the project after the Corps authorizes work, or a need to conduct a site visit, the Corps will provide additional opportunity for agency comment and for coordinating agencies to participate.

The Corps 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. The Corps will indicate the results of that consideration in the administrative record and will provide an informal response to the commenting agency.

5. **Mitigation:** Discharges of dredged or fill material into waters of the United States must be avoided or minimized to the maximum extent practicable. Compensation for unavoidable impacts may be required in accordance with the Mitigation Rule (33 CFR 332),

6. **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.

7. **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, and tribal water quality.

8. **Water Quality Certification:**

For Permittees on Non-tribal Land in New Mexico:

The NMED has issued conditional Water Quality Certification (WQC) for the RGP and can be found at this link:

www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/Regional%20General%20Permits/New%20Mexico/Emergency%20Repair%20WQCs/Emergency%20RGP%20WQC%20-%205-2017.pdf?ver=2017-05-18-105432-313

For Permittees on Non-tribal Land in Texas:

The Texas Commission on Environmental Quality (TCEQ) has certified pursuant to Section 401 of the Clean Water Act (CWA) and Title 30, Texas Administrative Code, Chapter 279, for activities for which it is responsible, and that result in the loss of less than 3.0 acres of Waters of the United States or less than 1500 linear feet of a stream in waters of the state, that activities conducted under the RGP should not result in a violation of established Texas Water Quality Standards provided that the Standard Provisions are followed. For projects that result in the permanent loss of 3.0 acres or greater of Waters of the United States or 1,500 linear feet or greater of streams, project specific Section 401 Water Quality Certification will be acquired under the Section 404 review process. The TCEQ has issued WQC for the RGP and can be found at this link:

www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/Regional%20General%20Permits/New%20Mexico/Emergency%20Repair%20WQCs/Emergency%20RGP%20WQC%20-%205-2017.pdf?ver=2017-05-18-105432-313

For Permittees on Tribal Lands: Water Quality Certification was requested from the Native American tribes within the Albuquerque District that have been granted Water Quality Certification authority by EPA. The Albuquerque District is treating non-responses from tribes as a denial of water quality certification, and will require a copy of individual project

certification from those certifying authorities prior to discharges of dredged and/or fill material into waters of the United States. The following is a list of tribes that have provided water quality certification for the RGP. Water quality certification response can be found at this link: www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/Regional%20General%20Permits/New%20Mexico/Emergency%20Repair%20WQCs/Emergency%20RGP%20WQC%20-%202017.pdf?ver=2017-05-18-105432-313

Tribes with water quality certification authority:

- Pueblo of Isleta
- Pueblo of Laguna
- Pueblo of Nambe
- Ohkay Owingeh Pueblo
- Pueblo of Picuris
- Pueblo of Pojoaque
- Pueblo of Sandia
- Pueblo of Santa Ana
- Pueblo of Santa Clara
- Pueblo of Taos
- Pueblo of Tesuque
- Navajo Nation
- Ute Mountain Ute Tribe

Tribes without water quality certification authority:

Water quality certification was requested from EPA for those tribes that do not have water quality certification authority. The EPA did not provide WQC for the RGP. The tribes that DO NOT have water quality certifying authority are: Therefore, project specific water quality certification must be requested from EPA for the below listed tribal areas:

- Pueblo of Cochiti
- Jemez Pueblo
- Pueblo of San Felipe
- Pueblo of San Ildefonso
- Zia Pueblo
- Santa Domingo/Kewa Pueblo
- Zuni Pueblo
- Mescalero Apache Nation
- Jicarilla Apache Nation
- Pueblo of Acoma

9. **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). When appropriate, the Corps will consult with FWS on specific requests to perform work under this RGP when a project may affect a threatened or endangered species. 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 FWS may provide project-specific recommendations to avoid or minimize potential take of listed species or adverse modification of designated critical habitat. 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/>.

10. **Historic Properties:** An activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is not authorized by this permit until the Corps has complied with Appendix C of 33 CFR 325 *and* the latest Corps interim guidance with respect to Appendix C. The permittee must notify the Corps if the activity may affect any historic properties listed, determined to be eligible for listing, or which the permittee has reason to believe may be eligible for listing in the National Register of Historic Places, and will not begin the activity until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. If the permittee discovers any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, the permittee 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.

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 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, 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 wetland disturbance, such as use of wide-treaded equipment or floatation devices.

13. **Suitable Material:** Use of broken concrete as fill or bank stabilization material is prohibited unless the applicant demonstrates that its use is the only practicable material (with respect to cost, existing technology, and logistics). Any applicant who wishes to use broken concrete as bank stabilization must provide notification to the Corps along with justification for such use. Use of broken concrete with rebar or used tires (loose or formed into bales) is prohibited in all waters of the United States.

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., FWS, National Park Service, USDA Forest Service, and Bureau of Land Management). As of the date this permit is issued, the 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. **Stream Channelization:** The Corps does not authorize blockage or filling of an existing stream meander in this RGP. Stream channelization is prohibited, except for minor channelization or alignments in the vicinity of stream crossings.

21. **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).

22. **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.
23. **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 the permittee and the appropriate Federal and State agencies.
24. **Removal of Temporary Fills:** 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.
25. **Removal of Vegetation:** Rooted vegetation removal must be authorized in advance by the Corps and shall be limited to that which is necessary to allow passage of expected high flows through a structure's inlet.
26. **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. 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 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 Post-Activity Report shall include any changes to the information provided in the original notification and the following:

- I. A description of the work that was completed.
 - II. Photos
 - (a) Pre and post-construction (date and location)
 - III. Detailed plans or as-built drawings (if required and if not submitted with the original notification)
 - IV. Statement confirming that all general and special conditions were followed
 - V. Mitigation Plan (if deferred due to urgency of the proposed project)
27. The permittee must comply with all Federal, State and local applicable regulations and ordinances.

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 is 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.
- d. The activity is determined to result in more than minimal impacts.

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