



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

# JOINT PUBLIC NOTICE

Public Notice Issue Date:  
11/17/2020

Comment Period Suspense Date:  
12/16/2020

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## NEWS RELEASE

### **DRAFT REVISIONS TO REGIONAL GENERAL PERMIT 16-01 for UTILITY LINE CONSTRUCTION, MAINTENANCE, AND REPAIR OR REMOVAL**

DATE: November 17, 2020

**SUBJECT:** The U.S. Army Corps of Engineers, Albuquerque District, (Corps) and the Texas Commission for Environmental Quality (TCEQ) are issuing a joint public notice regarding a proposal to reissue Regional General Permit (RGP) 16-01 for Utility Line Construction, Maintenance, Repair or Removal within the State of New Mexico and West Texas with revisions. The purpose of this public notice is to inform interested parties of the availability of the draft RGP and to solicit comments.

The Albuquerque District has posted this public notice with a draft of the revised RGP 16-01 at <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits.aspx>.

**AUTHORITIES:** 33 Code of Federal Regulations (CFR) Parts 322.2(f), 323.2(h), and 325.2(e)(2) published in the Federal Register November 13, 1986, pursuant to Sections 401 and 404 of the Clean Water Act (CWA).

**AREAS OF COVERAGE:** Within the Albuquerque District's area of responsibility for the Regulatory Program in New Mexico and West Texas.

**SCOPE OF ACTIVITIES:** Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

**Utility lines:** This RGP authorizes the construction, maintenance, and repair or removal of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, including projects where there is a change in pre-construction contours.

A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television

communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area. Material resulting from trench excavation may be temporarily side-cast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer (DE) may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This RGP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This RGP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This RGP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

This RGP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre- construction elevations. The areas affected by temporary fills must be revegetated with native species, as appropriate.

The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a

specific location. For linear projects crossing a single or multiple waterbody several times at separate and distant locations, each crossing is considered a single and complete project for purposes of RGP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations.

Each activity will be evaluated and, in some cases, may be authorized by nationwide permits or other regional general permits or may be exempt from regulation under Section 404(f)(1) of the Clean Water Act. An individual permit will be required for any activity that the DE determines to have more than minimal environmental effects, individually or cumulatively, or that may be contrary to the public interest.

**WATER QUALITY CERTIFICATION:** In accordance with Section 401 of the CWA, certification of compliance with state or tribal water quality standards by the state or tribal water quality certifying authority is required for any discharge of dredged or fill material into waters of the U.S. under Section 404 of the CWA.

Revisions to RGP 16-01 include the expansion of its applicable geographic area to the portion of West Texas within the Albuquerque District's boundaries, which consists of the following counties: El Paso, Hudspeth, Culberson, Loving, Winkler, Andrews, Ector, Ward, Crane, Upton, Reagan, Crockett, Val Verde, Terrell, Pecos, Reeves, Jeff Davis, Presidio, and Brewster. As such, the Texas Commission on Environmental Quality (TCEQ) is reviewing this draft RGP under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with state water quality standards. By virtue of an agreement between the Corps and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act.

Any comments concerning TCEQ's review of this draft RGP and pending decision regarding water quality certification may be submitted to their 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice is made available for review in the TCEQ's Austin office. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the public notice; a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how water quality certification of the RGP, if granted, would adversely affect such interest.

Pursuant to 20.6.2.2002 New Mexico Administrative Code, the New Mexico Environment Department (NMED) posted a joint public notice of this RGP on the Surface Water Quality Bureau (SWQB) website on September 7, 2016 ([www.nmenv.state.nm.us/swqb/WQA/Notice](http://www.nmenv.state.nm.us/swqb/WQA/Notice)), when it was initially proposed. The public comment period ended on October 7, 2016. No public comments were received. The SWQB issued conditional certification for RGP 16-01 on November 18, 2016.

It should also be noted that water quality certification for projects on tribal lands must be obtained from tribes that have water quality certification authority. For projects on tribal lands

where the tribe does not have water quality certification authority, certification must be obtained from the appropriate Regional Office of the Environmental Protection Agency.

Comments on this draft RGP may be submitted to:

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All comments must be received by November 27, 2020.

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