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US Army Corps of Engineers®

SPECIAL PUBLIC NOTICE

Emergency Processing Procedures

28 October 2005

Los Angeles District
Regulatory Branch

Department of the Army authorization, through a Corps permit, is required to conduct regulated activities within waters of the United States. This requirement holds even in emergency situations. The Corps does not issue "emergency permits" per se, but does implement significantly modified procedures to evaluate permit applications during emergency situations. Permit decisions may be made in a matter of days or hours depending upon the urgency of the situation.

33 CFR 325.2(e)(4) provides for the implementation of expedited processing procedures for the review, coordination, and decision making of Corps permit applications during emergency situations. These regulations also define an "emergency" as a situation that would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

On 14 January 2004 the U.S. Army Corps of Engineers South Pacific Division (SPD) provided guidance that extended their previously issued January 1, 1998 Program Guidance Letter (PGL), PGL 0-98-01, to 31 December 2005. This PGL addresses the submission of requests for implementation of Emergency Procedures under the provisions of 33 Code of Federal Regulations (CFR) Part 325.2(e)(4). The SPD anticipates that the PGL will be extended before it expires in December. These documents are attached to advise all interested parties of the special processing procedures developed by the South Pacific Division. These procedures are mandatory when requesting implementation of expedited processing for an individual permit application.

In many cases, responses to emergency situations that require a Corps permit may be authorized very quickly through a variety of General Permits, including Nationwide Permits and Regional General Permits (RGPs). In the Los Angeles District, RGP 63 was established to address emergency situations where the work would result in minimal effects to the environment. However, potential applicants should be advised that in order for a project to be consistent with the strict definition of the term “emergency” used in RGP 63, there must be “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.” In addition, RGP 63 imposes a number of important conditions on the permittee, including submission of a post-project report to the Corps within 45 days of project completion. As a result of non-compliance with permit conditions, a permit may be suspended, revoked, or modified and administrative penalties assessed. Pursuant to Section 309(g) of the Clean Water Act, the Corps of Engineers is able to levy Class I Administrative Penalties of up to $11,000 per violation of a permit Special Condition, to a maximum of $27,000. The reauthorization of this RGP in 2008 is dependent on the

degree to which permittees comply with the RGP's terms and conditions, particularly its reporting requirement. A copy of the terms and conditions of RGP 63 may be viewed at: http://www.spl.usace.army.mil/regulatory/RGP63_2003.pdf

For more information about emergency procedures, please contact the Regulatory project manager responsible for the geographic area in which you are located. A list of Corps project managers and their areas of responsibility may be viewed at: http://www.spl.usace.army.mil/regulatory/phonedir.html

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For additional information about this notice please contact Jack Malone, Ph.D. of my staff at (805) 585-2146. This public notice is issued by the Chief, Regulatory Branch.

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS
333 Market Street, Room 923
San Francisco, California 94105-2195

REPLY TO
ATTENTION OF:

CESPD-RP-C (1145) 14 JAN 2004

MEMORANDUM FOR

Commander, U.S. Army Engineer District, Albuquerque
Commander, U.S. Army Engineer District, Los Angeles
Commander, U.S. Army Engineer District, Sacramento
Commander, U.S. Army Engineer District, San Francisco

SUBJECT: South Pacific Division Program Guidance Letter O-98-01, Emergency Authorizations

1. References:

a. Memorandum, CESPD-CM-O, 27 Dec 2000, subject: South Pacific Division Program Guidance Letter O-98-01, Emergency Authorizations.

b. Memorandum, CECW-OR, 28 Feb 2001, subject: Emergency Permit Procedures in California.

c. Memorandum, SPD and U.S. Fish & Wildlife Service, 29 Jan 2001, subject: Emergency Procedures for 2000-01 Winter Flooding Events.

d. Memorandum, CECW-OR, 1 Dec 1997, subject: Emergency Permit Procedures.

2. Reference 1.a. is still relevant and applicable to all districts and field offices within the South Pacific Division (SPD) and is hereby extended until 31 December 2005 unless sooner revoked or modified.

3. With the recent USACE 2012 reorganization of SPD, the appropriate contacts, office symbols, and telephone numbers in priority order follow:

a. Regulatory Program Manager, CESPD-RP-C, (415) 977-8030, fax –8047 Alternate: Administrative Appeals Review Officer, CESPD-RP-C, (415) 977-8035.

b. Chief, Civil Works Integration Division, CESPD-RP-C, (415) 977-8230.

c. Director, Regional Programs, CESPD-RP, (415) 977-8019.

d. Deputy Division Engineer, CESPD-DD, (415) 977-8002

e. Division Engineer, CESPD-DE, (415) 977-8001

SUBJECT: South Pacific Division Program Guidance Letter O-98-01, Emergency Authorizations

4. References 1.b., 1.c., and 1.d. are also still applicable and provide relevant guidance in SPD in addition to Reference 1.a.

LEONARDO V. FLORES
Colonel, U.S. Army
Acting Division Commander

TO SPD

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:
CECW-OR

28 FEB 2001

MEMORANDUM FOR COMMANDER, SOUTH PACIFIC DIVISION

SUBJECT: Emergency Permit Procedures in California

1. We have reviewed the current situation in the State of California regarding their electrical supply and production problems. The White House February 16, 2001, Memorandum for the Secretaries of Defense, the Interior, Agriculture, and Commerce and the Administrator of the Environmental Protection Agency concerning this issue provides: "The Federal Government should make every effort to work with California and to help its citizens. I hereby direct all relevant Federal agencies to expedite Federal permit reviews and decision procedures with respect to siting and operation of power plants in California. All actions taken must be consistent with statute and ensure continued protection of public health and the environment while preserving appropriate opportunities for public participation."

2. Based on the above White House Memorandum, you are instructed to use the provisions of 33 CFR 325.2 (e)(4) "*Emergency procedures*" where the circumstances of a particular permit requirement meet the definition of "emergency" set forth in that provision. Examples of activities that would qualify for emergency permit procedures include pipelines that supply increased oil for electrical production facilities, energy distribution facilities, and energy production facilities, such as electrical generating facilities.

3. As directed by the White House, permits for activities that are necessary to address shortfalls in electrical supply and production in the State of California should be expedited. Furthermore, districts should utilize to the maximum extent possible, appropriate regulatory procedures that expedite permit decisions for such activities. The emergency permit procedures in Corps regulations address the need for appropriate federal, state, local agency and affected public involvement. In addition to the availability of the emergency permitting process, districts will maximize the use of nationwide and regional general permits for these activities.

FOR THE COMMANDER:

CHARLES M. HESS
Chief, Operations Division
Directorate of Civil Works

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
South Pacific Division
333 Market Street
San Francisco, California 94105

DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
California/Nevada Operations Office
2800 Cottage Way, Suite W-2606
Sacramento, California 95825

MEMORANDUM FOR ALL DISTRICT COMMANDS IN SOUTH PACIFIC DIVISION and ALL FIELD OFFICE SUPERVISORS IN CALIFORNIA & NEVADA

SUBJECT Emergency Procedures for 2000-01 Winter Flooding Events

DATE 29 JAN 2001

1. In preparation for any winter flooding events in the western United States, all Corps of Engineers districts in the South Pacific Division and Fish & Wildlife Service field offices in California and Nevada should review the appropriate regulations and regional guidance for responding to emergency situations.

2. 33 CFR 325.2(e)(4) describes emergency procedures for the Corps of Engineers Regulatory Program, whereas, 50 CFR 402.05 describes emergencies for Endangered Species Act consultation purposes. Supplemental regional guidance for processing emergency authorizations was issued in Mar 1995 (SPD PGL O-95-01) with subsequent corrections and extensions (SPD PGL O-98-01) issued in Jan 1998, Feb 1998, and Dec 2000.

3. Corps of Engineers headquarters issued additional emergency permit procedures guidance in Dec 1997, which is still applicable as we approach the winter wet season.

4. Also, several districts previously issued Regional General Permits that authorized emergency and recovery actions associated with the 1997-98 El Nino weather events. These and other RGP's for emergency repair work were developed in close cooperation with the FWS and National Marine Fisheries Service. We strongly recommend that each district and field office do likewise in preparation for the winter rains.

5. Contacts for additional information are Wade Eakle (SPD) at (415) 977-8030 and John Engbring (CNO) at (916) 414-6464.

PETER T. MADSEN
Brigadier General, U.S. Army
Division Commander

MICHAEL J. SPEAR
Manager, California/Nevada
Operations

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS
333 Market Street, Room 923
San Francisco, California 94105-2195

REPLY TO
ATTENTION OF

CESPD-CM-O 27 December 2000

MEMORANDUM FOR: Commander, Albuquerque District, ATTN: CESPA-OD-R
Commander, Sacramento District, ATTN: CESPK-CO-R
Commander, San Francisco District, ATTN: CESPN-OD-R
Commander, Los Angeles District, ATTN: CESPL-CO-R

SUBJECT: South Pacific Division Program Guidance Letter O-98-01, Emergency Authorizations

1. Please reference Program Guidance Letter (PGL) O-98-01, issued 1 January 1998 and corrected 25 February 1998 which extended the guidance provided by PGL O-95-01 until 31 December 2000. This guidance is still applicable to all Districts and field offices within the South Pacific Division (SPD) and is hereby extended until 31 December 2003.

2. With the recent restructuring of SPD, the appropriate contacts, office symbols, and telephone numbers in priority order follow:

a. Regulatory Program Manager, CESPD-CM-O, (415) 977-8030, fax (415) 977-8039/8047. Alternate: Administrative Appeals Review Officer, CESPD-CM-O, (415) 977-8035

b. Office of Counsel, CESPD-OC, (415) 977-8214/8211

c. Chief, Operations Division, CESPD-CM-O, (415) 977-8054.

d. Director, Civil Works & Management, CESPD-CM, (415) 977-8238.

e. Deputy Division Engineer, CESPD-DD, (415) 977-8002.

f. Division Engineer, CESPD-DE, (415) 977-8001

3. This guidance expires on 31 December 2003 unless sooner revoked or modified.

PETER T. MADSEN
Brigadier General, U.S. Army
Commanding

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS
333 Market Street, Room 923
San Francisco, California 94105-2195

REPLY TO
ATTENTION OF

CESPD-ET-C

25 February 1998

MEMORANDUM FOR: Commander, Albuquerque District, ATTN: CESPA-OD-R
Commander, Sacramento District, ATTN: CESPK-CO-R
Commander, San Francisco District, ATTN: CESPN-CO-R
Commander, Los Angeles District, ATTN: CESPL-CO-R

SUBJECT: South Pacific Division Program Guidance Letter O-98-01, Emergency Authorizations

1. Please reference SPD's Program Guidance Letter (PGL) O-98-01, issued 1 January 1998 which extended the guidance provided by PGL O-95-01 until 31 December 2000. The following additional comments and corrections are provided:

a. The referenced guidance applies to all actions requiring notice, i.e., individual permits and nationwide permits requiring a preconstruction notification (PCN). Those nationwide permits not requiring PCN's are not subject to the requirements of the PGL since there is no modification to normal procedures. The authorizations provided for in 33 CFR Part 325.2(e)(4) are departures from the usual procedures for review, coordination, and decision-making.

b. Paragraph 3.d. of PGL O-95-01 has a typographical error. "3.a." in the last sentence should read "3.c." which requires a written request for variance from normal procedures.

c. A typographical error also occurs in subparagraph 3.e(vi). "3.b." should read "3.d."

2. The above should clarify the intent of the referenced PGL's. The basis for this guidance is to assure compliance with the provisions of 33 CFR Part 325.2(e)(4) and to provide the necessary records to support actions taken during significant emergency events, such as the El Nino storm-related floods of 1998 in California. Additionally, my intent is to clarify that "emergency permits" do not exist; "emergency procedures" are provided for by regulation. In every case the Corps of Engineers is required to provide assurances that sensitive environmental resources and public interest concerns are considered even in times of emergency.

3. If you or your Regulatory Branch staff has any questions, please feel free to contact Mr. Wade L. Eakle, my Regulatory Program Manager, at (415) 977-8030.

MICHAEL A. GREBINSKI, P.E.
Chief, Construction-Operations
Division

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS
333 Market Street, Room 1002E
San Francisco, California 94105-2195

CONSTRUCTION-OPERATIONS DIVISION
PROGRAM GUIDANCE LETTER
PGL O-98-01

1 January 1998

Expires 31 December 2000
REGULATORY
Emergency Authorizations - Procedures for
The Regulatory Program

1. Purpose: To provide guidance with respect to submission of requests for implementation of Emergency Procedures under the provisions of 33 CFR Part 325.2(e)(4).

2. Applicability: This guidance is applicable to all District and field offices within the South Pacific Division and is effective 1 January 1998.

3. Guidance:

a. CESPD PGL O-95-01 issued on 27 March 1995 and expiring on 31 December 1997, is hereby extended until 31 December 2000, with the following changes:

1. The correct South Pacific Division office responsible for the receipt of faxed or e-mailed requests is CESPD-ET-C (Regulatory Program Office) [Paragraph 3.c].

2. The appropriate South Pacific Division contacts in priority order are (Paragraph 4.b):

a. Regulatory Program Manager, CESPD-ET-C, (415) 977-8030

b. Chief, Construction-Operations Division, CESPD-ET-C, (415) 977-8031

c. Office of Counsel, CESPD-OC, (415) 977-8211

d. Director. Engineering & Technical Services, CESPD-ET, (415) 977-8019

e. Deputy Division Engineer, CESPD-DD, (415) 977-8002

f. Division Engineer, CESPD-DE, (415) 977-8001

4. This guidance expires on 31 December 2000 unless sooner revoked or modified.

Attachment: CESPD PGL O-95-01

J. RICHARD CAPKA
Brigadier General, U.S. Army
Commanding

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-OR

11 DEC 1997

MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMANDS, AND DISTRICT COMMANDS

SUBJECT: Emergency Permit Procedures

1. The purpose of this memorandum is to provide a concise description of emergency procedures available under the U.S. Army Corps of Engineers Regulatory Program. This memorandum may be distributed as public information about these procedures.

2. Pursuant to 33 CFR 325.2(e)(4), emergency situations are defined as those in which an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship would result if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

3. In response to specific requests from the regulated public, or in response to situations which generally pose a threat to human life or property, the district engineer must determine whether an emergency permit response is warranted. If so, the district engineer must explain the situation and recommend appropriate special permitting procedures to the division engineer, who will instruct the district engineer as to further processing of such applications.

4. In response to recommendations from district engineers, division engineers are authorized to approve special processing procedures in emergency situations, in order to authorize necessary actions requiring permits more quickly than the normal permitting procedures would allow.

5. Even in emergency situations, reasonable efforts will be made to receive comments from interested Federal, State, and local agencies, and the affected public. The district engineer's determination of appropriate mitigation requirements for individual activities authorized under emergency procedures may be deferred if that is necessary, as dictated by the exigent circumstances of an emergency situation. Neither the solicitation of comments, nor the determination of mitigation requirements should ever delay the emergency authorization of urgently needed work to respond to an emergency situation. In extreme emergencies, district engineers may immediately authorize, or authorize after-the-fact, activities that must proceed without delay to protect life and/or property. This may include oral authorization where necessary. Coordination and any public notice of the activity in such situations could be after-the-fact, if the emergency response so requires.

6. In situations where there are predicted events that are expected to result in the need for emergency permitting by the Corps, advance measures should be taken. For example, in preparation for the expected weather anomalies with the 1997/1998 El Nino, the districts in the South Pacific Division are issuing regional general permits that will cover most emergency and recovery actions. The districts are also providing the flood control agencies with 24-hour phone numbers (pagers) for communication with the Corps Regulatory Program. This is essential to provide access for the most probable permit applicants during emergency situations.

7. In order to inform all interested parties of the implementation of an emergency permit process, as detailed in 33 CFR 325.2(e)(4), the district engineer must publish appropriate notice of any special procedures authorized, and of the rationale supporting those procedures, as soon as practicable. In cases of extreme emergency, this could be after-the-fact.

8. In summary, the focus of the emergency permit procedures is to confirm that, when an emergency situation occurs, the district should fulfill as many standard procedural requirements as are reasonably allowed by the emergency situation, but the district will not delay a timely response because of any standard procedural requirement. Furthermore, during an emergency situation, the district will insure that there is immediate access to appropriate district personnel.

FOR THE COMMANDER:

CHARLES M. HESS
Chief, Operations, Construction
and Readiness Division
Directorate of Civil Works

DISTRIBUTION:
(SEE PG 3)

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS
630 Sansome Street, room 1219
San Francisco, California 94111-2206

CONSTRUCTION-OPERATIONS DIVISION
PROGRAM GUIDANCE LETTER
PGL O-95-01

27 March 1995

Expires 31 December 1997
REGULATORY
Emergency Authorizations - Procedures for
The Regulatory Program

1. Purpose: To provide guidance with respect to submission of requests for implementation of Emergency Procedures under the provisions of 33 CFR Part 325.2(e)(4).

2. Applicability: This guidance is applicable to all district offices within the South Pacific Division and is effective NLT 31 March 1995.

3. Guidance:

a. 33 CFR Part 325.2(e)(4) provides for implementation of significantly modified procedures for the review, coordination and decision making with respect to permit applications in emergency situations that "... would result in an unacceptable hazard to life, a significant loss of property or an immediate, unforeseen and significant economic hardship...".

b. It must be understood that there is no such thing as an "Emergency Permit"; the regulations make no provision for issuing an "Emergency Permit" however that term might be defined. The regulation requires that "... even in an emergency situation..." reasonable efforts will be made to coordinate with Federal, state and local agencies and the affected public.

c. Except in the most urgent of situations, requests for authority to use special processing procedures will be signed by the District Engineer or his Deputy. The request shall be submitted in writing via LAN or FAX transmission addressed to Commander, South Pacific Division, ATTN: CESPD-CO (Regulatory). Copies may be sent to other Division elements (i.e. Office of Counsel, Deputy Commander etc.) at the District's discretion.

d. The District will make reasonable efforts to obtain the views and comments with respect to the proposed action from the appropriate Federal, state and local agencies as well as the affected public. Records of these contacts and the District's evaluation will be part of the written recommendation required by 3.a. above.

e. As a minimum, the following information is to be provided to the Division Engineer:

(i) Applicant's name, address and telephone number (or the applicant's agent)

Application number

Location of the proposed activity

Description of the proposed activity including schematic drawings of sufficient detail to describe the work proposed.

(v) The District's assessment of the circumstances justifying the use of special procedures.

Record copies of the contacts described in paragraph 3.b. above.

(vii) Any special conditions appropriate to the proposed activity as determined by the District Engineer and/or recommended by other commenting agencies.

(viii) Statement regarding conformance with state water quality certification requirements and/or coastal zone management requirements, when applicable.

f. In cases of extreme urgency requiring, in the District Engineer's opinion, immediate response and follow on action, the above information may be relayed via telephone to CESPD-CO-R with written follow-up via electronic transmission within 24 hours. Verbal reports should be well organized and succinct in format to facilitate full and complete understanding of the situation.

4. Additional Information:

a. The Division will provide written response within 12 hours of the receipt of the District's request provided all of the essential information is available. In cases of extreme urgency, approvals with any appropriate conditions, will be provided verbally followed by written confirmation.

b. In the event of emergencies occurring after normal working hours, over a weekend or during holidays the District personnel involved will attempt to contact appropriate Division contacts in priority order as follows:

(i) Regulatory Program Manager, CESPD-CO-R

(ii) Director, Construction-Operations Division, CESPD-CO

(iii) Deputy Division Engineer, CESPD-DE-D

(iv) Division Engineer, CESPD-DE

The names and telephone numbers will be made available to District Regulatory Branch Chiefs and updated as required.

c. In accordance with the regulation, the District will issue a Public Notice detailing any special procedures authorized and their rationale within 30 days of the date of the Division Engineer's authorization to use expedited processing procedures. This notice will be circulated to the appropriate Federal, state and local agencies and the affected public as defined in 33CFR325.3(a)(1 thru 8).

5. This guidance expires on 31 December 1997 unless sooner revoked or modified.

FOR THE COMMANDER:

THEODORE E. DURST
Regulatory Program Manager
Construction-Operations Division