



# Regional General Permit 104

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## WILDFIRE MITIGATION ACTIVITIES

**EFFECTIVE:** March 15, 2024

**EXPIRES:** March 15, 2029

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The U.S. Army Corps of Engineers, Los Angeles District, hereby issue Regional General Permit 104, authorizing activities involving the discharge of dredged or fill material into waters of the United States, including wetlands, and/or work in or affecting navigable waters of the United States for wildfire mitigation, such as prevention, protection, response, clean-up, and recovery from wildfires in the State of Arizona.

Note: The term "you" and its derivatives, as used in this RGP, means the permittee or any future transferee. The term "Arizona Branch" refers to the appropriate U.S. Army Corps of Engineers, District office identified in the *Contacts and Additional Information* section below.

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Los Angeles District

**ACTION ID:** SPL-2022-00559

**AUTHORITIES:** Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States and Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States.

**LOCATION:** Statewide (Arizona)

**PURPOSE:** In Arizona, wildfire mitigation is a critical concern due to the state's susceptibility to wildfires. To address this issue, this RGP was established to provide a streamlined permitting process for wildfire prevention, response, and recovery while protecting the nation's aquatic resources within the State of Arizona.

**AUTHORIZED ACTIVITIES:** This RGP may be used to authorize activities in waters of the United States involving the discharge of dredged or fill material and structures or work in or affecting navigable waters associated with wildfire mitigation, including wildfire protection, prevention, response, clean-up, and recovery, as described in Table 1 below.

**Table 1. Wildfire Mitigation Activities Covered under RGP 104**

	<b>Description</b>	<b>Authorized Activities</b>
1. Utility Lines and Associated Infrastructure	<p>Maintenance, improvement, repair, rehabilitation, replacement, or removal of any previously authorized structure or fill and/or work associated with utility lines and their infrastructure.</p> <p>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.</p>	<ul style="list-style-type: none"> <li>• Attachment to existing bridges, causeways, and culverts over navigable waters of the United States.</li> <li>• Overhead to underground conversion of utility lines in waters of the United States.</li> <li>• Temporary structures, fills, and work in waters of the United States.</li> <li>• Minor deviations in the structure's configuration or filled area in waters of the United States, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement.</li> <li>• Remediation of inadvertent returns of drilling fluids through sub-soil fissures or fractures that occur during horizontal directional drilling in waters of the United States, to the extent a Corps permit is required.</li> <li>• Exploratory geotechnical type bore holes and exploratory trenching in waters of the United States, including plugging of seismic shot holes and other exploratory type bore holes, to the extent a Corps permit is required.</li> </ul>
2. Access Areas	<p>Construction, maintenance, improvement, repair, rehabilitation, replacement, or removal of temporary and permanent access areas, such as maintenance vehicle pullouts, access roads, staging, storage, parking, and laydown areas, including pads, roads, bridges, culverts, and wetland protection matting.</p>	<ul style="list-style-type: none"> <li>• Installation of temporary structures, such as scaffolding, pilings, and footings for bridges, docks, and piers in navigable waters of the United States.</li> <li>• Operation of temporary construction equipment in navigable waters of the United States, such as barges, tractors, and boats.</li> <li>• Stream channel modifications, including bank stabilization, in waters of the United States to construct or protect the structure; such modifications must be in the immediate vicinity of the authorized work.</li> <li>• The use of dredged material in waters of the United States if this office determines</li> </ul>

	<b>Description</b>	<b>Authorized Activities</b>
		that it will not cause more than minimal adverse environmental effects.
3. Temporary Dewatering	Installation, maintenance, repair, rehabilitation, or replacement of temporary dewatering structures, such as cofferdams, bladder dams, diversion tunnels/pipes, and sheet piles.	The use of dredged material in waters of the United States if this office determines that it will not cause more than minimal adverse environmental effects.
4. Sediment/Debris Management	Installation, maintenance, repair, rehabilitation, replacement, or improvement of sediment/debris management structures such as racks, screens, and barriers.	<ul style="list-style-type: none"> <li>• Mechanical or hydraulic removal of sediment or debris such as excavating, dredging, or pumping in waters of the United States, to the extent a Corps permit is required.</li> <li>• The discharge of associated return water into waters of the United States from an upland contained dredged material disposal area.</li> </ul>
5. Damaged Uplands	Repair, maintenance, or improvement of upland areas damaged by wildfire.	Bank stabilization and/or stream channel modifications in waters of the United States to construct or protect the repaired uplands.
6. Fire/Fuel Breaks	Construction, maintenance, repair, rehabilitation, replacement, or improvement of fire and/or fuel breaks.	Mechanical removal of vegetation involving the substantial disruption of the root system, or the mechanized pushing, dragging, or redeposit of excavated soil material in waters of the United States, to the extent a Corps permit is required.
7. Development Structures	Repair, replacement, removal, or rehabilitation of residential, commercial, industrial, and institutional development structures.	Minor deviations in the structure's configuration or filled area in waters of the United States, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement.

In accordance with 33 CFR 322.2(f)(1) and 33 CFR 323.2(h)(1), this RGP authorizes activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts when conducted under the terms and conditions of this permit.

#### **TERMS OF AUTHORIZATION:**

1. This RGP does not provide special procedures for emergency situations but may authorize qualifying activities during an emergency provided you are able to submit a Preconstruction Notification (PCN) prior to commencing work in waters of the U.S. and the emergency work is verified in writing by this office. Emergency work and/or activities that cannot be verified in writing prior to commencing emergency work in waters of the U.S. under this RGP, must be specifically approved, in writing, by this office under separate authorization, such as the Los Angeles District's Regional General Permit 63 Repair and Protection Activities in Emergency Situations.

2. This RGP may not be used to authorize stream channelization, stream relocation, reclamation of lands lost to normal erosion processes over an extended period, or construction of permanent debris retention structures or basins in waters of the United States, as these activities must be specifically approved, in writing, by this office under separate authorization.
3. The activity must be a single and complete linear or nonlinear project, as defined in the Section F of the March 15, 2021, Federal Register Notice for Reissuance and Modification of Nationwide Permits; Final Rule (86 FR 2744), which can be found at: <https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>.
4. Loss of waters of the U.S., including the loss of streambed, shall be determined using the definition in Section F of the March 15, 2021, *Federal Register Notice for Reissuance and Modification of Nationwide Permits; Final Rule (86 FR 2744)*, which can be found at: <https://www.federalregister.gov/documents/2021/01/13/202100102/reissuance-andmodification-of-nationwide-permits>.
  - a. Loss of waters of the U.S., shall not exceed 0.5 acre or 300-linear feet of streambed for each single and complete project; and,
  - b. The linear foot loss of streambed shall be included in the 0.5-acre threshold for loss of waters of the U.S. for each single and complete project.
  - c. For activities in wetlands, the activity shall not cause a loss of greater than 1/10 of an acre.
5. Material resulting from trench excavation may be temporarily side cast into waters of the United States for no more than 180 days, provided the material is not placed in such a manner that it is dispersed by currents or other forces, and shall be removed within 30 days following completion of the activity. 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).
6. Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i) and shall acquire authorization under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
7. Utility line foundations within jurisdictional waters must be the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) must be used where feasible.
8. Expansion of utility line substations is prohibited in wetlands adjacent to intermittent or perennial waters.
9. All access roads must be the minimum width necessary and constructed so that the length of the road minimizes any adverse effects on waters of the United States. Permanent roads

must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Permanent access roads are prohibited in wetlands adjacent to intermittent or perennial waters.

10. Temporary discharges of dredged and/or fill must consist of clean materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills and/or structures must be removed in their entirety and the affected areas returned to pre-construction contour and elevation. The areas affected by temporary fills must be revegetated, as appropriate.
11. The removal of sediment, debris, and/or vegetation is limited to the minimum necessary to restore the waterway. Sediment and debris removal may alter the preconstruction course, condition, capacity, and location of open waters if they benefit the aquatic environment (e.g., stream restoration or rehabilitation activities).
12. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States, unless otherwise specifically approved by this office under separate authorization. Proper sediment and erosion controls must be used (see 401 water quality certification).
13. The restoration of damaged areas, including any bank stabilization, must not exceed the pre-existing contours, or ordinary high-water mark, that existed before the damage occurred.
14. Where an exploratory trench is dug, the area must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States.

#### **GENERAL CONDITIONS:**

Activities requiring PCN may not proceed under the authority of this RGP until you have been notified, in writing, by this office that the activity is authorized.

1. Prior to commencing work in waters of the U.S., you shall submit a PCN for the following activities:
  - a. Discharges of dredged or fill material in intermittent and perennial streams, special aquatic sites to include peatlands, salt marshes, wet meadows, wetlands, riffle-pool complexes, sanctuaries, or refuges.
  - b. Discharges of dredged and/or fill material resulting in a loss of >1/10 acre of water of the U.S. for each single and complete project.
  - c. Discharges of dredged and/or fill material into waters of the U.S. on Tribal lands.
  - d. Discharges of dredged and/or fill material: a) exceeding 300 linear feet into perennial or intermittent streams; or 2) exceeding 1,000 linear feet into jurisdictional ditches or canals.
  - e. Work in or affecting navigable waters of the United States.

f. Activities that would 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 the river is in an official study status.

g. Activities that require permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”).

h. Activities that may affect federally listed as threatened or endangered species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation), pursuant to Section 7 of the Federal Endangered Species Act (ESA).

i. Activities which have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, pursuant to Section 106 of the National Historic Preservation Act (NHPA); or,

2. The following Clean Water Act (CWA) Section 401 general water quality certification decisions shall apply to this RGP:

a. For RGP activities on non-tribal lands in the State of Arizona where the Arizona Department of Environmental Quality (ADEQ) is the certifying authority, you shall comply with all terms and conditions of the attached general Section 401 Certification dated November 15, 2023, which is expressly incorporated as condition of this RGP. If you cannot comply with one or more of the general water quality certification conditions, you must request individual water quality certification from ADEQ.

b. For RGP activities on Tribal Lands and lands of exclusive federal jurisdiction in the State of Arizona where the U.S. Environmental Protection Agency (EPA) is the certifying authority, you shall comply with all terms and conditions of the attached general Section 401 Certification dated February 7, 2024, which is expressly incorporated as condition of this RGP. If you cannot comply with one or more of the general water quality certification conditions, you must request individual water quality certification from the EPA.

c. For RGP activities on reservation lands of the Hualapai Tribe, the San Carlos Apache Tribe and the White Mountain Apache Tribe, Individual Section 401 certification is waived for all projects. There is no requirement to obtain individual Section 401 certification for any RGP activity within these certifying authorities’ areas of responsibility.

d. For RGP activities on reservation lands of the Hopi Tribe, Gila River Indian Community, Individual Section 401 certification from the applicable tribe is required for all projects.

e. For RGP activities on reservation lands of the Navajo Nation, you shall comply with all terms and conditions of the attached September 26, 2023, Conditional Section 401 Certification, which is expressly incorporated as condition of this RGP. If you cannot comply with one or more of the general water quality certification conditions, you must request individual water quality certification from the Navajo Nation.

3. Where the certifying authority has not previously certified compliance of this RGP with CWA Section 401, individual water quality certification for the proposed discharge must be obtained or waived. If the certifying authority issues an individual water quality certification for the proposed discharge, you must submit a copy of the certification to this office. The discharge is not authorized by the Corps until this office has notified you that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.
4. No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. The permittee understands and agrees 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 or her 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 expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
5. This office will determine the need for appropriate and practicable compensatory mitigation necessary to ensure that adverse effects on the aquatic environment are minimal. Compensatory mitigation may be required for permanent or temporary discharges of dredged or fill material that convert waters of the U.S. to non-waters of the U.S. Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a wetland to an upland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level. You may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, you must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR Part 332.
6. If you discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by this RGP, you must immediately notify this office of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. We will initiate the Federal, Tribal, and State coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
7. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity or sell the property associated with this permit. You may make a good faith transfer to a third party. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and

forward a copy of the permit to this office to validate the transfer of this authorization. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area. Maintenance activities associated with the authorized structure or fill, must be specifically approved, in writing, by this office if they involve the discharge of dredged or fill material into waters of the United States or work in or affecting navigable waters of the United States.

8. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

9. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

10. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. The permittee is responsible for ensuring that the action authorized by this permit complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

11. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

12. Adverse effects to the aquatic ecosystem resulting from impoundments of water, accelerated passage of water, or restricted passage of flow must be minimized to the maximum extent practicable.

13. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

14. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. You are not authorized to initiate any activities in waters of the U.S. that have the potential to impair tribal rights under this RGP until this office has completed necessary tribal coordination/consultation or has determined the proposed action does not impair tribal rights, unless tribal coordination/consultation is addressed programmatically (e.g., by a Programmatic Agreement).



15. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

16. 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 the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect 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 responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. No activity is authorized which may directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized which “may affect” a listed species or critical habitat unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.” Authorization of an activity by this RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS the ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS or their world wide web page at <http://www.fws.gov/ipac>.

18. No activity is authorized which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

19. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that the activity is being, or has been, accomplished in accordance with the terms and conditions of this permit.

20. You are responsible for all authorized work and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of the permit authorization. You shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all installation activities are completed.

21. If the property associated with this permit is sold, you shall transfer the verification to the new owner by submitting a letter to this Corps office to validate the transfer. The letter must contain the name and address of the transferee, as well as the following statement and signature of the transferee:

When the structures or work authorized by this regional general permit (RGP) are still in existence at the time the property is transferred, the terms and conditions of this RGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

#### **PRE-CONSTRUCTION NOTIFICATION PROCEDURES:**

1) In accordance with General Condition 1, you shall submit an electronic PCN to the appropriate District office consisting of a written request for verification under this RGP. Electronic submittals shall be sent to the Los Angeles District, Arizona Regulatory Branch, [splregulatoryaz@usace.army.mil](mailto:splregulatoryaz@usace.army.mil)

2) The PCN shall include a letter or a completed Department of the Army Permit Application Form (*ENG 4345*), requesting authorization under this RGP, and shall contain the following information to be considered complete:

a) name, address, and telephone number of the project proponent.

b) location of the proposed activity.

c) a description of the proposed activity as follows:

(1) the activity's purpose.

(2) direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other

waters expected to result from the activity, in acres, linear feet, or another appropriate unit of measure.

(3) a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and,

(4) any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed activity or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification.

The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow this office to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

d) a brief narrative describing how the proposed activity is wildfire related, such as the name and date of the specific wildfire for which the proposed activities would occur or evidence of a Federal, State, or local abatement order, demonstrating the proposed activities are wildfire related.

e) a brief narrative describing how the proposed activity would comply with all General Conditions of this RGP, a statement identifying why the General Condition does not apply or a description of why compliance with the General Condition is not practicable. Failure to comply with a General Condition may result in this office determining the proposed activity does not qualify for authorization under this RGP and will be evaluated under an alternative process.

f) for linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by this RGP but do not require PCNs). This information will be used by this office to evaluate the cumulative adverse environmental effects of the proposed linear project and does not change those non-PCN activities into PCN activities.

g) sketches showing that the activity complies with the terms of the RGP. Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans.

h) a delineation of wetlands, other special aquatic sites, and other waters, as defined by our current regulations, on the project site. Wetland and Ordinary High Water Mark delineations must be prepared in accordance with the current method required by the Corps.

i) for an activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a USACE

project, the PCN must include a statement confirming that you have submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

j) if the proposed activity will result in the loss of greater than 1/10-acre of water of the United States and a PCN is required, you must explain why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, you may submit a conceptual or detailed mitigation plan.

k) for non-Federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For activities that require a PCN, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act.

l) for non-Federal permittees, if the activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For activities that require a PCN, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act; and,

m) for an activity that will 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 the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river."

3. Where required by the terms of this RGP, you must notify this office by submitting a PCN as early as possible. This office will determine if the PCN is complete within 30 calendar days of the date of receipt. If the PCN is determined to be incomplete, we will notify you within 30 days to request the additional information necessary to make the PCN complete. Generally, we will request additional information necessary to make the PCN complete only once. However, if you do not provide all the requested information, then we will notify you that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received.

4. Activities requiring PCN may not proceed under the authority of this RGP until you have been notified, in writing, by this office that the activity is authorized.

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization:
  - 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 projects.
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 issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Re-evaluation of RGP Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces 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 you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate.

You will be required to pay for any corrective measures ordered by this office, and if you fail 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 you for the cost.

6. Discretionary Authority: This office has the discretion to suspend, modify, or revoke authorizations under this permit. This discretionary authority may be used by us to further condition or restrict the applicability of this permit for cases in which we have concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any factor of the public interest. Should we determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to waters of the United States or otherwise be contrary to the public interest, we will modify the authorization to reduce or eliminate those adverse effects or notify you that the proposed activity is not authorized by this permit and provide instructions on how to apply for authorization under another type of DA permit. Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from us, such as a Nationwide Permit, Regional General Permit, Letter of Permission, or Standard Permit. We will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. We may include additional special conditions to a verification under this permit to ensure the activity has minimal impact. We may also restore authorization under this RGP at any time we determine the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. We may also use our discretionary authority to modify, suspend, or revoke this permit at any time.

**PERMIT DURATION:** This permit is valid for five years from issuance and will expire on **March 15, 2029**. We may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest. If we have not reissued the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended, or revoked by us at any time deemed necessary. In such instance, we will issue a public notice concerning the proposed action. This RGP may be reissued, after public notice and documentation of the decision. Activities requiring PCN must be verified in writing by this office. Verification letters are valid till the expiration date of this RGP.

**CONTACTS AND ADDITIONAL INFORMATION:**

For questions, please contact this office by phone at 602-230-6949, or by email at: [splregulatoryaz@usace.army.mil](mailto:splregulatoryaz@usace.army.mil). For an updated list of contacts, please visit our website at: <http://www.spl.usace.army.mil/missions/regulatory>.

U.S. Army Corps of Engineers  
Los Angeles District, Regulatory Division  
3636 N. Central Avenue, Suite 900  
Phoenix, Arizona 85012

**ATTACHMENTS:**

1. Clean Water Act Section 401 Water Quality Certification, ADEQ, EPA and Navajo Nation.

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



2024.03.18

12:35:50 -07'00'

David Castanon  
Chief, Regulatory Division

Date



Katie Hobbs  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Karen Peters  
Cabinet Executive Officer  
Executive Deputy Director

*Via Electronic Mail*

David Castanon  
U. S. Army Corps of Engineers - Regulatory Branch  
Ventura, CA

Re: Clean Water Act § 401 Water Quality Certification for the proposed Regional General Permit No. 104 for Wildfire Mitigation Activities in Arizona

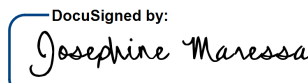
Dear Mr. Castanon:

The Arizona Department of Environmental Quality (ADEQ) has reviewed the U.S. Army Corps of Engineers (USACE) public notice and certification request pursuant to the Clean Water Act Section 401, dated August 17, 2023, for the new Regional General Permit (RGP) No. 104 (SPL-2022-00559) for Wildfire Mitigation Activities in Arizona. Based on the public notice, ADEQ certifies the RGP104, with the following conditions:

- ADEQ shall receive a Section 401 certification request (application) if the proposed activity will occur within the ordinary high water mark (OHWM) of an impaired or not-attaining water, or a lake, pursuant to Arizona Administrative Code (A.A.C.) R18-11, Water Quality Standards.
- ADEQ shall receive a Section 401 certification request (application) if the proposed activity will occur within the OHWM of an outstanding Arizona water (OAW), pursuant to Arizona Administrative Code (A.A.C.) R18-11, Water Quality Standards. In accordance with Arizona's Antidegradation Rule (A.A.C. R18-111-107.01(C)), impacts to OAWs are prohibited, however, ADEQ may issue an individual § 401 WQC for temporary activities (less than 6 months) if the proposed activities will not affect water quality in an OAW.

Information on ADEQ's CWA § 401 WQC and impaired, not-attaining, or outstanding Arizona waters can be found on our website at <https://www.azdeq.gov/cwa401>

Sincerely,

DocuSigned by:  
  
A5AF6048FAC8426...  
Josephine Maressa, Deputy Director  
Water Quality Division  
Arizona Department of Environmental Quality

11/15/2023

Date

electronic copies: USACE – Arizona Regulatory Branch, Attn.: Kathleen Tucker  
USEPA – Wetlands Regional Office, Attn.: Russell Huddleston





Navajo Nation Environmental Protection Agency  
Surface and Ground Water Protection Department  
P. O. Box 339, Window Rock, AZ 86515  
Phone: 928-871-7692 • Fax: 928-871-7996



Dr. Buu Nygren  
President

Richelle Montoya  
Vice-President

Kathleen Tucker, Senior Project Manager  
U.S. Army Corps of Engineers-Los Angeles District  
Regulatory Division  
3636 N. Central Ave, Suite 900  
Phoenix, AZ 85012

September 26, 2023

**Re: Navajo Water Quality Conditional 401 Certification – Action No. SPL-2022-00559, Regional General Permit 104 – Wildfire Mitigation Activities (Navajo Nation 401 Certification Number 2023-0123TC)**

Kathleen Tucker:

The Navajo Nation Environmental Protection Agency NPDES Water Quality Program (NNEPA WQP) has reviewed the Draft Regional General Permit (RGP) 104 (ACTION ID: SPL-2022-00559) – Wildfire Mitigation Activities for Arizona, including tribal lands within Arizona. The US Army Corps of Engineers, Los Angeles District (Corps) requests a Clean Water Act Section 401 Water Quality Certification for RGP 104. A pre-certification filing meeting was held between the Corps and NNEPA WQP on September 5, 2023. The justification for the requirements of the following conditions is to ensure that all projects and activities permitted by the RGP 104 will not violate the Navajo Nation Surface Water Quality Standards. The Corps request for a 401 certification for RGP 104 is granted with the following conditions:

1. RGP 104 applicants shall review the current Navajo Nation Surface Water Quality Standards (NNSWQS). The current NNSWQS may be found at <https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf>. (NNSWQS are updated every few years. Contact the NNEPA WQP to confirm the current version of NNSWQS.)
2. All projects and activities permitted by the RGP 104 will not violate the NNSWQS.
3. Corps shall provide to the NNEPA WQP notification of all RGP 104 projects within the Navajo Nation
4. Any information required to be submitted to the NNEPA WQP shall be submitted by emailed to: [patrickantonio@navajo-nsn.gov](mailto:patrickantonio@navajo-nsn.gov)  
Or by mail to:  
NNEPA NPDES/ Water Quality Program Manager  
PO Box 339  
Window Rock, AZ 86515  
NNEPA WQP Phone number is 928-871-7185
5. RGP 104 applicants shall adhere to all Corps Regional Conditions for the Navajo Nation.

6. RGP 104 applicants shall provide a copy of these Clean Water Act § 401 Water Quality Certification conditions for Corps RGP 104 to all appropriate contractors and subcontractors. RGP 104 applicants shall ensure that these conditions are understood by all appropriate contractors and subcontractors. RGP 104 Applicant shall keep a copy of these conditions at the work site where the workers may read it. (Justification – ensures that contractors and subcontractors comply with Navajo Nation Surface Water Quality Standards 2015 (NNSWQS 2015) Sections 203 and 207).
7. Erosion control and/or bank protection features (e.g., silt fences, straw bales, riprap, or mulching) shall be used, where appropriate, to minimize channel or bank erosion and soil loss. These features shall be maintained, as necessary, during pre-construction and construction periods. Denuded areas shall be revegetated as soon as possible with native plants and seed. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
8. Earthen fill placed in locations subject to scour shall contain no more than ten percent (10%) of particles finer than 0.25 mm diameter (passing a No. 60 sieve, on a dry weight basis) unless it is native fill material being placed back into the area from which it was dredged (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
9. Upon completion of work activities, the work area shall be restored to maintain the stability of upstream and downstream segments of the impacted surface water bodies listed above with respect to erosion and sedimentation. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
10. RGP 104 applicants are responsible for ensuring construction material and/or fill, placed within the ordinary high water mark (OHWM), is free from substances (including fines that may be associated with rip-rap material) that can cause or contribute to pollution of a surface water (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
11. Debris (such as soil, silt, sand, construction debris, rubbish, cement, asphalt, oil or petroleum products, organic materials, tires and/or batteries) derived from site activities shall not be deposited at any site where it may be washed into Water of the United States and shall be properly disposed at a facility approved to accept such debris after completion of the work. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
12. RGP 104 applicants shall have a spill containment plan to ensure that pollutants are contained, removed and properly disposed of. In addition, equipment maintenance shall be performed at an upland site away from Waters of the Navajo Nation. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
13. Runoff and seepage from alterations of the natural environment into the impacted surface water bodies listed above shall not cause a violation of NNSWQS 2015 Sections 203 and 207.
14. Construction materials, including concrete, asphalt, and piping, shall consist of materials that do not leach pollutants into surface or ground waters. Activities shall be conducted and monitored to ensure that pollution from concrete formation and equipment washing does not drain into surface or ground waters (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
15. At completion, all work residues, equipment and non-native materials shall be removed from and properly disposed outside the 100-year floodplain. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
16. At completion, all work residues, equipment and non-native materials shall be properly disposed at a facility approved to accept such waste. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
17. Stockpiles of materials shall be stored outside of jurisdictional waters. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).

18. No discharge of process water, material processing residue, wastewater or other residual material is authorized within jurisdictional waters. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).
19. Flows shall be diverted around work operations or the work shall be performed during low water conditions when the area is naturally dewatered. When there is water flow within the work area, work activity shall cease and work equipment relocated outside the watercourse. (Justification – ensures that contractors and subcontractors comply with NNSWQS 2015 Sections 203 and 207).

This conditional certification is approved with the understanding that the subject activities are consistent with all applicable Corps terms, conditions, and regional conditions. If there are any substantive changes in the proposed project that may affect water quality, the applicant shall notify the Corps and NNEPA WQP. Failure to do so will result in revocation of this certification. This certification is valid for the period specified in the RGP 104. If for some reason the Corps RGP 104 is revoked, suspended or modified, this certification may also be revoked, suspended or modified.

If you have any questions, please contact Patrick Antonio, Program Manager/Principal Hydrologist, with the NNEPA Water Quality/NPDES Program at (928) 871-7185.

Sincerely,



Yolanda Barney, Director, Surface and Groundwater Protection  
Navajo Nation Environmental Protection Agency

Copy furnished:

USEPA, Region IX – Thomas Torres, Director, Water Division, 75 Hawthorne Street, San Francisco, CA 94105.  
NNEPA/WQP & NPDES Programs, Post Office Box 339, Window Rock, AZ 86515



## REGION 9

SAN FRANCISCO, CA 94105

Kathleen Tucker  
U.S. Army Corps of Engineers Los Angeles District  
3636 N Central Ave # 740  
Phoenix, Arizona 85012  
Kathleen.A.Tucker@usace.army.mil

Subject: Clean Water Act (CWA) Section 401 Certification for the Regional General Permit 104 for Wildfire Prevention, Protection, Response, Clean-up, and Recovery in the State of Arizona, U.S. Environmental Protection Agency File No. 2023-507

Dear Kathleen Tucker,

I hereby grant with conditions the subject water quality certification consistent with Section 401 of the Clean Water Act (CWA). On December 4, 2023, the U.S. Environmental Protection Agency Region 9 (EPA) received a request for certification from the U.S. Army Corps of Engineers (Corps), to authorize discharges of dredged and fill material into waters of the United States for the purpose of wildfire protection, prevention, response, clean-up, and recovery in the State of Arizona. EPA reviewed the application and supplemental information and posted a public notice of the proposed project on the EPA Region 9 website from December 20, 2023, through January 20, 2024. No responses were received.

Based on the project description, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA, any Federal and state or Tribal laws or regulations implementing those sections, and any other water quality-related requirement of state or Tribal law, subject to the enclosed conditions pursuant to Section 401(d). The enclosed CWA Section 401 water quality certification applies to Tribal lands (see Enclosure) and lands of exclusive federal jurisdiction in relevant respects<sup>1</sup> where the EPA is the certifying authority in the State of Arizona.

Please provide this certification to anyone contacting the Corps with applicable projects that may be authorized under this regional general permit. If a project is unable to comply with the requirements outlined in the enclosed conditions, the project is not considered covered by this certification. In these cases, the project proponent can contact the EPA Region 9 for a project-specific certification, to submit pre-filing meeting requests, or for any certification-related questions by email at [R9cwa401@epa.gov](mailto:R9cwa401@epa.gov).

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<sup>1</sup> Please contact the EPA Region 9 with questions regarding the jurisdictions where this certification decision applies at [R9cwa401@epa.gov](mailto:R9cwa401@epa.gov). Where no state agency or Tribe has authority to give such certification, the EPA is the certifying authority.

For activities that require a Preconstruction Notification for Regional General Permit 104 for Wildfire Prevention, Protection, Response, Clean-up, and Recovery in the State of Arizona, EPA requests that upon receipt of notification, the Corps provide an electronic copy of the permit application/notification to the EPA Region 9 and the appropriate Tribal authority. The EPA strongly encourages additional coordination with adjacent and surrounding Tribes of project areas to address cultural and water quality concerns of transboundary impacts.

The EPA appreciates our long-standing partnership and coordination in implementing Section 401 of the CWA. Please contact our Region 9 Clean Water Act Section 401 Coordinator Russell Huddleston at [Huddleston.russell@epa.gov](mailto:Huddleston.russell@epa.gov) or 415-972-3507 if you have any questions.

Sincerely,

Tomás Torres  
Director, Water Division

ENCLOSURE

U.S. Environmental Protection Agency Region 9's Clean Water Act Section 401 Certification of the U.S. Army Corps of Engineers Regional General Permit (RGP) for Wildfire Prevention, Protection, Response, Clean-up, and Recovery





## **REGION 9**

SAN FRANCISCO, CA 94105

### **Enclosure**

### **U.S. Environmental Protection Agency Region 9's Clean Water Act Section 401 Certification of the U.S. Army Corps of Engineers Regional General Permit (RGP) for Wildfire Prevention, Protection, Response, Clean-up, and Recovery**

This Clean Water Act (CWA) Section 401 water quality certification (WQC) applies to the water quality-related impacts from the activity subject to the Regional General Permit 104 (SPL-2022-00559) Federal permit, including the activity's construction and operation, for Wildfire Prevention, Protection, Response, Clean-up, and Recovery within Tribal lands listed below and lands of exclusive federal jurisdiction in relevant respects, in the State of Arizona where the U.S. Environmental Protection Agency is the certifying authority.

#### **Tribal Lands in Arizona Included in this Certification:**

Ak-Chin Indian Community of the Maricopa Indian Reservation  
Cocopah Tribe of Arizona  
Colorado River Indian Tribes of the Colorado River Indian Reservation  
Tonto Apache Tribe of Arizona  
Fort McDowell Yavapai Nation  
Fort Mojave Indian Tribe of Arizona, California & Nevada  
Havasupai Indian Tribe  
Hualapai Indian Tribe of the Hualapai Indian Reservation  
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation  
Pascua Yaqui Tribe of Arizona  
Quechan Tribe of the Fort Yuma Indian Reservation  
Salt River Pima-Maricopa Indian Community of the Salt River Reservation  
San Juan Southern Paiute Tribe of Arizona  
Tohono O'odham Nation of Arizona  
Yavapai-Apache Nation of the Camp Verde Indian Reservation  
Yavapai-Prescott Indian Tribe

Section 401(a)(1) of the CWA requires applicants for federal licenses or permits that may result in any discharge into waters of the United States to obtain certification or waiver from the certifying authority where the discharge would originate. Where no state agency or Tribe has the authority to give such certification, the EPA is the certifying authority. In this case, 1) the State of Arizona and 2) the Tribes without treatment in a similar manner as a state (TAS) for section 401 do not have the authority to provide CWA section 401 certification for projects within Tribal lands listed above and lands of

exclusive federal jurisdiction in relevant respects in the State of Arizona, therefore, the EPA is making the certification decision for Regional General Permit 104 (SPL-2022-00559).

#### **General Information:**

Authorized projects and activities shall be completed in accordance with the project description provided in the application and any supplemental information submitted to and authorized by the Corps. Material changes to the project or activity described in the preconstruction notification that have not been approved by the Corps are not covered by this certification. The project proponent is responsible for obtaining and complying with all other permits, licenses, and certifications that may be required by federal, state, or Tribal authorities.

Wildfire activities authorized under this RGP are expected to comply with all General Permit 104 requirements and conditions, including but not limited to soil erosion and sediment controls, suitable materials, inspection authorizations, removal of temporary fills, mitigation, management of water flows and aquatic life movement, as well as the conditions included in this certification. In addition, a copy of the section 401 certification should be kept at the project site at all phases of construction.

#### **Conditions for Certification**

For lands of exclusive federal jurisdiction in relevant respects and on behalf of the Tribes without TAS for section 401 in the State of Arizona, the EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA, any Federal and state or Tribal laws or regulations implementing those sections, and any other water quality-related requirement of state or Tribal law, subject to the following conditions pursuant to section 401(d):

**Condition 1:** The project proponent shall request a project-specific CWA section 401 certification from the EPA Region 9 for any activities resulting in a point source discharge in the following types of jurisdictional aquatic resources of special concern, such as bogs, fens, and other peatlands; natural springs; alkali wetlands; riffle-pool complexes of streams; and wet meadows. This certification **does not** cover activities that may result in a point source discharge into jurisdictional aquatic resources of special concern. Identification of such special aquatic sites is part of the wetland delineation, which is a required component of the Regional General Permit 104 pre-construction notification.

**Why the condition is necessary to assure that the activity will comply with the applicable water quality requirements:** Discharge of dredged or fill material into these systems can alter water circulation patterns and hydroperiods, which in turn can release nutrients causing shifts in native to non-native species composition; release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, and ultimately change the capacity of these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Thus, this condition is necessary to ensure a case-by-case review of any actions or activities proposed in these specific aquatic resource site types, which are inherently difficult to replace, have high ecological functions and values, and for which potential degradation cannot be determined to meet water quality requirements on a general permit basis.

**Citation: 40 CFR 230.1(d); 40 CFR 230.10(a)(3); 40 CFR 230.10(d); 40 CFR 230.75(c)**

**Condition 2:** Notification to the EPA

At least five (5) days prior to commencing work in waters of the United States, project proponents shall provide a copy of the pre-construction notification (PCN) to the EPA Region 9 at [R9cwa401@epa.gov](mailto:R9cwa401@epa.gov).

**Why the condition is necessary to assure that the activity will comply with the applicable water quality requirements:** This condition is necessary to provide the EPA Region 9 with notice and information to allow for an efficient and effective review to determine that the activity will comply with the certification and conditions as well as any necessary inspection prior to the initial operation of the federally licensed or permitted facility or activity which may result in any discharge into waters of the United States.

**Citation(s) that authorizes this condition: 33 U.S.C. 1341(a)(4)**

**Condition 3:** To prevent, limit and respond to unauthorized discharges, the project proponent shall:

- Not allow debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes to enter or be stored within 50 feet of where it may enter waters of the United States.
- Inspect all equipment daily and prior to entering any waters of the United States for oil, gas, diesel, antifreeze, hydraulic fluid and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the United States; and within 24 hours of detection of a leak, any equipment shall be repaired in a staging area or moved offsite.
- Clean all contaminated areas within 12 hours of spill detection and remove contaminated soil from the site or contain it in enclosed containers. Containers shall not be located closer than 50 feet to a water of the United States.
- Have containment booms and/or absorbent material available onsite prior to the commencement of work onsite. In the case of spills, project proponent shall immediately employ containment booms and/or absorbent materials to prevent discharges from reaching waters of the United States.

If spills or unauthorized discharges occur during the project, the project proponent shall notify the EPA Region 9 within 6 hours from discovery. As part of the notice, the project proponent shall provide an adaptive management plan for remedying the spill or unauthorized discharge.

- For non-emergencies during normal business hours, call (415) 972-3507. For emergencies or after hours, call (800) 424-9300.
- The project proponent shall include details for adaptive management activities (to address and prevent further spills or unauthorized discharges) and monitoring for chemical and physical water quality criteria such as inorganic compounds, total dissolved solids, turbidity, dissolved oxygen, specific conductivity, and pH (depending on the nature of the discharge). The project proponent shall also outline the baseline water quality criteria and frequency for reporting the monitoring data until the project proponent can report to the EPA Region 9 that the baseline water quality criteria were met. While the plan will be highly dependent on the magnitude and



the nature of the discharge, at a minimum, the project proponent shall monitor the appropriate water quality criteria daily after a spill or unauthorized discharge and provide a final remediation report (including photo-documentation) to the EPA Region 9, detailing the return to the baseline water quality criteria, the remediation efforts, and the adaptive management efforts employed to prevent further spills or unauthorized discharges.

**Why the condition is necessary to assure that the activity will comply with the applicable water quality requirements:** Protection of water quality includes implementation of suitable measures to control site runoff, spillage, waste disposal, drainage and spills from construction activities and raw material storage as such sources may contribute significant amounts of pollutants into waters of the United States. This condition also helps protect water quality by preventing the spread of invasive or nuisance species. In the event that a spill or unauthorized discharge occurs, the project proponent has an opportunity to remedy the spill and adaptively manage the project rather than continue to risk further spills or unauthorized discharges occurring.

**Citation: 40 CFR 230.10(d); 40 CFR 230.74(a); 40 CFR 230.74(b)**

**Condition 4:** If a proposed structure or fill in waters of the United States requires dewatering activities, prior to performing any in-water activities, a project proponent seeking authorization under this RGP shall submit a dewatering plan to the EPA Region 9 for concurrence. If a project proponent does not receive a response from the EPA Region 9 within 3 business days of submission of the plan, the project proponent may proceed with dewatering activities per the dewatering plan. If the EPA identifies a missing component(s) of the dewatering plan within 3 business days of submission, the project proponent may not proceed until all components outlined below have been provided to the EPA Region 9. Unless the activity has an approved dewatering plan, the project proponent shall only conduct work when there is no water present in the stream channel.

The Dewatering Plan shall include descriptions of the following:

- Method for pre-disturbance assessment/measurement (including photo-documentation) and post-construction restoration of the pre-construction contours and site conditions of the waters of the U.S. affected by the structure or fill.
- In the dewatering plan, the project proponent shall describe the restoration success criteria based on the pre-construction assessment and anticipated timeline for achieving the site restoration.
- Reporting to EPA (including photo-documentation) and adaptive management processes if any of the dewatering methods cause erosion or if unauthorized discharges occur before the site restoration activity has met the restoration success criteria identified in the plan.
  - EPA Region 9 requires reporting of unauthorized discharges or water quality violations within 6 hours of discovery.
- Methods for dewatering.
- Equipment that would be used to conduct the dewatering.
- Timing, including length of time the area is to be dewatered.
- Area (acres) and length (linear feet) in waters of the United States of the structure and/or fill used for the dewatering.
- Method for removal of the temporary structures and/or fill.

- Frequency and methods for monitoring and maintenance of dewatering measures to ensure unauthorized discharges do not occur before the site restoration is complete.
- At a minimum, all dewatering measures should be assessed within 24 hours after a rain event and any ineffective measures shall be repaired or modified as required to protect water quality.
- Reporting and adaptive management processes if any of the dewatering methods cause erosion or if unauthorized discharges occur before the site restoration is complete.
- EPA Region 9 requires reporting of unauthorized discharges or water quality violations within 6 hours of discovery.

**Why the condition is necessary to assure that the activity will comply with the applicable water quality requirements:** General conditions included in the RGP do not address dewatering activities. Dewatering activities can often be a point source for pollutants entering waters of the United States. This condition is necessary to ensure that the authorized activity does not result in more than minimal degradation to water quality and the aquatic environment.

**Citation: 40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.74**