



**U.S. Army Corps
Of Engineers**
Walla Walla District
201 North Third Avenue
Walla Walla, WA 99362-1876

Public Notice:

Regional General Permit - Emergency (RGP-E) Reissuance 2nd Commenting Period

APPLICATION NO.: NWW-2011-00159

WATERWAY: Statewide

APPLICANT: N/A

DATE ISSUED: March 15, 2023

END DATE: March 30, 2023

15-Day

Interested parties are hereby notified that the Walla Walla District (District) is evaluating the reissuance of Department of the Army Regional General Permit – Emergency (RGP-E) for work conducted during emergency conditions in waters of the U.S., including wetlands.

The District previously noticed this reissuance effort on June 9, 2021, however, the RGP was not reissued. Due to this lapse in time, the District is again soliciting comment from the public.

Activities proposed under this action remain the same. However, proposed special/general conditions have been altered, in most cases to respond to comments received under the prior public notice. Where appropriate, previously proposed special conditions will be adopted as general conditions. Special conditions will be reserved for project specific actions on a case-by-case basis after review by a regulatory project manager.

Comments received as part of the prior public notice will be carried forward and considered in the current evaluation. There is no need to re-submit comments if you previously commented.

NWW-2011-00159

An emergency condition, as defined for this RGP-E, is a situation which would result in an unacceptable threat to human life, significant loss of property, and/or significant economic hardship if corrective action requiring a Department of the Army permit is not accomplished within a time period less than the standard time needed to process the permit.

If an Emergency Condition occurs in an area where endangered species exist or that is designated as critical habitat for an endangered species, emergency measures defined by RGP-E may be authorized in accordance with regional notification procedures and/or Chapter 8 of the ESA Section 7 Consultation Handbook (1998).

U.S. ARMY CORPS OF ENGINEERS PROJECT MANAGER: James Joyner – (208) 522-1645; james.m.joyner@usace.army.mil

PURPOSE: To respond to applications for Corps permits in the State of Idaho during emergency conditions in a timely and consistent manner.

WATERWAY/LOCATION: Waters of the United States within the State of Idaho (including rivers, lakes, streams, and wetlands) located within an area experiencing emergency conditions.

AUTHORITY: This permit will be issued or denied under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344). A Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States, including wetlands.

This permit will also be issued or denied under the authority of Section 10 of the Rivers & Harbors Act of 1899 (33 U.S.C. 403). A Department of the Army permit is required for work or structures waterward of the ordinary high water mark located in or over navigable waters of the United States, including the excavation, dredging or deposition of material in navigable waters, or any alteration obstructing or affecting the course, location, condition, or capacity of the navigable waterway.

BACKGROUND: Regional General Permits are Department of the Army permits issued on a regional basis for categories of activities that:

- Are substantially similar in nature and cause only minimal individual and cumulative environmental impacts
- Would avoid unnecessary duplication of regulatory control exercised by another Federal, state, or local agency

WORK: RGP-E would authorize temporary work and or the temporary discharge of dredged or fill material associated with emergency conditions and would be restricted to

those necessary during the emergency to prevent the loss of life, significant property loss and significant economic hardship. These activities would occur to restore, repair and or stabilize features that have been damaged, destroyed or are in imminent danger of failing.

Authorized activities would include, but are not limited to:

- **Repair, Construction or Re-Construction of Linear Transportation Features:** These activities will usually occur because temporary access is needed to perform other actions listed below. These temporary features will be needed to restore vehicle passage or access to homes, businesses, etc. until the emergency has passed or until a more permanent solution can be designed.

Activities would include, but are not limited to, culvert or bridge replacements or repairs; restoration of road prism at the original site or in a new location; placement of rock or other structures to protect transportation features; or the removal of debris jams around bridges, culverts, or other transportation features where such a jam is threatening the stability of the transportation feature.

- **Protection, Repair and/or Replacement of Utility Structures:** This activity will occur to protect or re-establish utilities such as electricity, water, sewer, natural gas, or other transmission lines. Temporary utilities may be needed until more permanent solutions can be constructed. These activities can involve excavation and trenching, backfilling, armoring with rock or other suitable material, placement of utility poles and aerial transmission lines.
- **Debris Removal:** This activity includes the removal of debris around bridges, culverts, or other transportation features where such debris is threatening the stability of the transportation feature.
- **Temporary Levee Construction:** This activity will occur to protect homes, businesses, and public infrastructure. It is expected that these levees will be removed and the land restored once the emergency has passed. Levees will be constructed of suitable materials and sloped and/or armored with rock or other stabilizing material to prevent erosion and failure.
- **Levee Repair, including Breach Closures:** This activity would occur to stop scour and allow the closing of breaches and impacts to the levee prism including the discharge of suitable material including riprap.
- **Placement of Suitable Material for Bank Stabilization or Revetment Repair:** This activity would occur to stop erosion and to protect private property and

public infrastructure. Large rock or other suitable clean fill material may be placed in the amount needed to stop erosion and to protect property or public infrastructure along river or stream banks.

- **Construction of Temporary Drainage Ditches:** This provision allows the construction of temporary drainage ditches that are needed to aid in the removal of flood waters from residential, commercial areas or from public infrastructure. These drainage ditches would likely flow to existing surface tributaries or drainage facilities.
- **Pile Driving or Repair:** This activity is usually associated with the repair or replacement of damaged pier or dock piling in/along rivers and lakes. It includes driving of piles, including sheet piling, to protect or support structures or fills until a more permanent repair or replacement can be accomplished.
- **Dam Repair:** Repairs to prevent erosion and potential failure of an existing dam including the placement of rock or other suitable material.
- **Sandbagging:** Allows the use of sandbags (gravel bags, bulk bags, water barriers, etc.) to temporarily reinforce structures and prevent flooding impacts. The sandbags must be removed when the emergency has passed, and the sand must be discharged in uplands where it cannot re-enter waters of the US, including wetlands.

PERMITTING PERIOD: Reissuance of the permit would authorize construction during emergency conditions for another 5 years from the date of issuance.

NUMBER OF DISCHARGES EXPECTED ANNUALLY: 40 CFR 121.5(c)(4) requires that the Corps estimate the number of discharges expected to be authorized by the proposed general permit each year. During the previous iteration of the permit, the Corps utilized RGP-E an average of 15 times per year, with a maximum of 34 times in a single year correlating with exceptionally high flows. Due to the nature of emergency response, the number of annual discharges is difficult to estimate and is anticipated to vary widely depending on the conditions each year.

REQUIRED NOTIFICATION and APPROVAL PROCEDURES: All parties proposing work under RGP-E are required to contact the appropriate Corps Regulatory Office¹. A determination, by the Corps, must be made if the proposed work is necessitated by

¹ <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Contact-Us/>

NWW-2011-00159

emergency conditions and if it meets the criteria, per Federal Regulation 33 CFR 325.2(e)(2).

The following information is required and may be provided using the Joint Application for Permit²:

1. Name, address and telephone number and e-mail address, if available.
2. The name, address, and telephone number of the owner of the affected property, if you are not the owner.
3. Description of the proposed work, including:
 - a. Purpose and need
 - b. Type, composition, quantity of all material to be excavated or placed below the ordinary high water mark, in waters of the U.S., including wetlands
 - c. Location of activity
 - d. Name of waterway
 - e. Length, width and depth of fill or excavated areas
 - f. Discussion of direct and indirect adverse environmental effects of the proposed activity
 - g. Location of any disposal sites for excavated material
 - h. Equipment to be used
 - i. Identification/delineation of any wetlands
 - j. Receiving area for any excess water
 - k. Any other pertinent or supporting data
4. A location map indicating location of the proposed work and legal description (section, township, range; county; latitude and longitude).
5. Drawings showing plan, cross sectional views with elevations and dimensions.

² <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Joint-Application-for-Permit/>

The above information must clearly describe the proposed project so the Corps can determine if the work complies with the terms and conditions of the RGP-E. Your project may not proceed until you have received approval notification from the Corps that the proposed work meets RGP-E criteria.

PROPOSED GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends 90 days from the date of the permit verification. If the emergency condition continues beyond the 90-day limit, the Corps may extend the time limit up to an additional 90 days upon request and documentation by the permittee that emergency conditions still exist.

The removal of fill or restoration of the work area to pre-construction elevations is required within 90 days of the end of the emergency conditions and the area must be seeded or planted with appropriate native species, unless the work period is extended by the Corps, in which case restoration and seeding/planting must occur at the end of the extension.

2. The activity must be designed and constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable. 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. Additionally, material shall be of suitable size, free of fines to the extent practicable and the minimum amount necessary to prevent further damage or loss of aquatic resources.
3. Navigation (as applicable): No activity may cause more than a minimal adverse effect on navigation.
4. Erosion control (as applicable): 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, must be permanently stabilized at the earliest practicable date.
5. Temporary crossings and culverts (as applicable): Crossings shall be suitably culverted, bridged, or otherwise designed and constructed to maintain flows and minimize adverse effects to aquatic life movements. Culverts must be constructed to withstand expected high flows and must not restrict or impede the passage of normal or high flows and minimize adverse effects to aquatic life movements.

NWW-2011-00159

6. Spawning areas (as applicable): Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
7. Migratory birds and eagles (as applicable): Activities in waters of the U.S. that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to ensure the action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.
8. If the permittee discovers any previously unknown historic or archeological remains and artifacts while accomplishing the activity authorized by this permit, the permittee must immediately notify the appropriate Corps office of what was found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps 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.
9. The permittee shall comply with any conditions specified in the Section 401 Water Quality Certification issued by the certifying authority with jurisdiction in the project area.
10. De-watering & Re-watering (as applicable):
 - a. Cofferdams shall be constructed of non-erosive material such as concrete jersey barriers, bulk bags, water bladders, sheet pile, and other similar non-erosive devices. Cofferdams may not be constructed by using mechanized equipment to push streambed material through flowing water.
 - b. Diversion channels constructed to bypass flow around the construction site shall be lined with plastic, large rock, pipe or otherwise protected from erosion prior to releasing flows into or through the diversion channel.
 - c. Water removed from within the coffered area shall be pumped to a sediment basin or otherwise treated to remove suspended sediments prior to its return to the waterway.
 - d. To prevent unwanted passage of state or federally protected fish, if present, from the coffered area, Water pipe intakes shall, to the extent practicable, be screened with openings measuring $< 3/32$ inch to prevent entrainment of fish trapped in the coffered area.

- e. Stream channels that have been dewatered during project construction shall be rewatered slowly to avoid lateral and vertical erosion of the dewatered channel, prevent damage to recently reclaimed work areas and/or damage to permitted work.
11. Pile driving (as applicable): All pile driving authorized by RGP-E will utilize a noise reduction block and bubble curtain to reduce impacts to fish and other aquatic fauna, unless waived in writing by the District Engineer.
12. The permittee shall allow representatives from the Corps to inspect the authorized activity at any time deemed necessary to ensure that it is/was accomplished in accordance with the terms and conditions of this RGP-E.
13. The permittee is responsible for all work done by any contractor. The permittee shall ensure any contractor who performs the work is informed of and follows all the terms and conditions of this authorization. Where applicable, the permittee shall also ensure these terms and conditions are incorporated into engineering plans and contract specifications.
14. Every permittee who has received RGP-E authorization must submit a signed notification documenting removal of all temporary fills. This Completion Notification is enclosed for your convenience and must be completed and returned to us within 180 days from the date of this authorization, unless extended.

Finally, project-specific special conditions may be added to individual verifications under this permit.

The District Engineer may require additional special conditions be included in any authorization issued under the RGP-E to avoid or minimize adverse environmental impacts. The District Engineer may also require the processing of an individual permit for an activity determined to have more than minimal adverse environmental effects, individually or cumulatively, or would be contrary to the public interest.

CORPS OF ENGINEERS ACTIONS: Upon verification that the emergency condition and remedies described comply with the RGP-E requirements, the Corps of Engineers will notify the agencies listed in the Regional General Permit-E by phone and/or e-mail. The Corps will provide the most detailed description possible based on information available and will consider all comments received.

OTHER ENVIRONMENTAL DOCUMENTS AND DEPARTMENT OF THE ARMY

PERMITS ISSUED RELEVANT TO RGP-E:

- NWW-2011-00159: RGP-E issued April 9, 2012
 - Idaho Department of Environmental Quality (IDEQ) Water Quality Certification (WQC) issued April 3, 2012

- NWW-2011-00159: RGP-E reauthorized September 20, 2016
 - IDEQ WQC issued August 4, 2016

WATER QUALITY CERTIFICATION: Water quality certification (WQC) was previously requested and received from the Idaho Department of Environmental Quality (IDEQ), Environmental Protection Agency (EPA), Coeur d'Alene Tribe (CDT), and Shoshone-Bannock Tribes (SBT). WQC, was also previously requested from the Shoshone-Paiute Tribes (SPT) for their area of responsibility, however no response was received during the "reasonable period of time". In accordance with 40 CFR 121.9 the request has been considered waived.

CULTURAL RESOURCES: Coordination will be conducted with the office of the Idaho State Historic Preservation Officer to determine if this activity will affect a site that is listed on the National Register of Historic Places, or a site that may be eligible for listing on the Register. Coordination will also be conducted with the appropriate Tribal entity or the Tribal Historic Preservation Offices for tribes with areas of interest in Idaho to determine if there are any tribal historic or cultural interests within the project area.

TRIBAL TREATY RIGHTS AND INTERESTS: Coordination was previously conducted with tribes whose area of interest intersects with the State of Idaho. Federal agencies acknowledge the federal trust responsibility arising from treaties, statutes, executive orders and the historical relations between the United States and American Indian Tribes. The federal government has a unique trust relationship with federally recognized American Indian Tribes. The Corps has a responsibility and obligation to consider and consult on potential effects to Tribal rights, uses, and interests. The Corps further recognizes there may be a need for additional and on-going consultation.

ENDANGERED SPECIES: The project is within the known or historic range of approximately 21 species listed under the Endangered Species Act (ESA), including many associated critical habitats^{3, 4}. Coordination will be conducted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to determine if the activity will have any effect on species designated as endangered or threatened under the ESA, or their critical habitat, under the Endangered Species Act of 1973 (87 Stat. 844).

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the National Marine Fisheries Service on all actions or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). Coordination will be conducted with NMFS to determine if the activity will have any effect on EFH.

ENVIRONMENTAL IMPACT STATEMENT: Preliminary review indicates the proposed activities will not require preparation of an Environmental Impact Statement. Comments provided will be considered in preparation of an Environmental Assessment.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. This decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and in general, the needs and welfare of the people. In addition, our evaluation will include application of the EPA Guidelines (40 CFR 230) as required by Section 404(b)(1) of the Clean Water Act.

CONSIDERATION OF PUBLIC COMMENTS: The Corps of Engineers is soliciting comments from the general public, Federal, State, and local agencies, and officials, Tribal entities, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

PUBLIC HEARING: Any person may request in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposed activity. Requests for a public hearing shall state specific reasons for holding a public hearing. A

NWW-2011-00159

request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

COMMENT & REVIEW PERIOD: Interested parties are invited to provide comments on the proposed activity, which will become a part of the record and will be considered in the final decision.

Please mail all comments to:

Mr. James Joyner
U.S. Army Corps of Engineers, Walla Walla District
Idaho Falls Regulatory Office
900 N Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Comments should be received no later than the comment due date of March 30, 2023, as indicated on this notice, to receive consideration.