

SPD Emergency Procedures and SPK Regional General Permit 8 for Emergency Actions

Regulatory Program Workshop

November 6, 2015

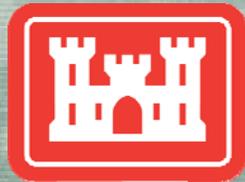
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US Army Corps of Engineers
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Definition of an Emergency

- **Regulatory Program Definition [33 CFR 325.2(e)(4)]**

An “emergency” is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen and significant economic hardship... *if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.*



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Definition of an Emergency

- **The situation must meet the Regulatory Program definition of “emergency” in order to use emergency permitting processes.**
 - ▶ If an applicant requests a permit for a situation that they regard as an emergency, but it does not meet our definition of an emergency as cited in the regulations, we would not process a permit using emergency procedures or Regional General Permit 8; however, we can attempt to issue a Nationwide Permit, Letter of Permission, or other instrument, in an expeditious manner.
 - ▶ Under these circumstances, we could communicate the nature of the situation to other state and federal agencies (e.g., Regional Water Quality Control Board, SHPO, FWS, NMFS, etc.) as required, and request an expedited review and recommendation/concurrence.



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Emergency Permitting Processes

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 - 1) By using the South Pacific Division “**Regulatory Program Emergency Procedures**”.
 - 2) By using the Sacramento District **Regional General Permit 8, for Emergency Actions**.



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 - 1) By using the South Pacific Division “**Regulatory Program Emergency Procedures**”.
 - 2) By using the Sacramento District **Regional General Permit 8, for Emergency Actions**.

These two instruments have differing requirements, and potentially differing timelines, though both are considered to be “expedited” processes.



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Emergency Permitting Processes

- **Which instrument will be used?**
 - ▶ Urgency can be a factor – work that must occur today may be processed differently than work that can wait for a few days.
 - ▶ RGP 8 General Conditions may limit the authorization of certain activities and impacts, resulting in the need to use SPD Regulatory Program Emergency Procedures instead.



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Key Documents

- **South Pacific Division Emergency Procedures:**

- ▶ QMS 12502-SPD

- ▶ Can be found at the South Pacific Division website on the “SPD Public Notices and References” page:

- <http://www.spd.usace.army.mil/Portals/13/docs/regulatory/qmsref/emergency/emergency.pdf>



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- **Sacramento District Regional General Permit 8 for Emergency Actions:**

- ▶ Can be found at the Sacramento District Regulatory Division website on the “General Permits” page:

- http://www.spk.usace.army.mil/Portals/12/documents/regulatory/gp/RGP-08/RGP-8-EmergencyActions09_29_2015.pdf



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Regional General Permit 8



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- **Permit Overview**

- ▶ Covers emergency actions (that meet the General Conditions, with inclusion of any Special Conditions deemed appropriate by the PM) within the Corps' Sacramento District boundaries, excepting Colorado.



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- ▶ Authorizes structures or work affecting navigable waters of the U.S., and/or the discharge of dredged or fill material in WOUS, including wetlands, for repair or protection of existing structures, in an emergency situation. The structures, work, or discharge is limited to the minimum necessary to protect, repair or rehabilitate a previously authorized, currently serviceable structure or fill.



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- ▶ Complete replacement or upgrades to existing facilities are generally not authorized unless the work is required to meet current construction standards and/or results in only very minor additional impacts to WOUS. If authorized, replacements must be in-kind.



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Regional General Permit 8

■ Permit Overview

- ▶ Unavoidable adverse impacts may require compensatory mitigation. A mitigation proposal should be submitted with the application package.
- ▶ Work must be initiated within seven (7) days of receiving authorization.
- ▶ Applicant has six (6) months to complete the work.
- ▶ RGP 8 cannot be used to permit work after-the-fact.



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Regional General Permit 8

- **Notification – Applicant Responsibilities**
 - ▶ Applicant must contact Corps in writing, and via telephone, as soon as possible.



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- ▶ Applicant must contact Corps in writing, and via telephone, as soon as possible.
- ▶ After this initial contact, documentation (via email or fax) verifying the emergency, and providing all of the information required in the “Contents of Notification” section of RGP 8, will be provided to the appropriate Corps office.



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Regional General Permit 8

▪ Notification – Applicant Responsibilities

- ▶ Applicant must contact Corps in writing, and via telephone, as soon as possible.
- ▶ After this initial contact, documentation (via email or fax) verifying the emergency, and providing all of the information required in the “Contents of Notification” section of RGP 8, must be provided to the appropriate Corps office.
- ▶ Applicant’s notification requires, but is not limited to:
 - Location, coordinates, maps of sufficient detail indicating WOUS, project extent, and impacts
 - Detailed descriptions of project, nature of emergency, rationale for why it’s an emergency
 - Measures proposed to avoid and minimize impacts to the aquatic environment
 - Compensatory mitigation plan
 - Information on Federally-listed threatened or endangered species, critical habitat, Essential Fish Habitat and/or historic properties, potential or listed, that may be affected by the action.



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▪ Notification – Applicant Responsibilities

▶ Applicant must also notify the agencies listed in General Condition 2, and pay any required fees. In California, these agencies are:

- EPA
- USFWS
- NMFS
- CDFW
- SHPO / ACHP
- State Water Resources Control Board
- Regional Water Quality Control Board



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▪ Notification – Corps Responsibilities

- ▶ Corps will send notification package to agencies and potentially interested Native American tribes.
- ▶ Corps will request that agencies inform us as to whether they intend to provide substantive, site-specific comments, and if so, when.
- ▶ If Corps has received comments, the comments will be fully considered in relation to the agency's legal authority and the conditions of the permit related to that authority.
- ▶ Recommendations for mitigation measures will be considered.
- ▶ Corps will provide responses to commenting agencies.



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▪ Agency Processes – Additional Information

- ▶ **Section 401 Water Quality Certification has already been issued for emergency activities meeting the terms and conditions of RGP 8.**
 - Work must comply with terms and conditions of the 401 WQC.

- ▶ **USFWS, NMFS and SHPO/ACHP are operating under their own emergency procedure regulations (50 CFR 402.05, 36 CFR 800.12), and may have requirements that the Corps will work with the applicant to address.**
 - Work in waters of the U.S. cannot begin until notified by the Corps that the requirements of the Endangered Species Act and the National Historic Preservation Act have been satisfied and the activity is authorized.



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▪ Agency Processes – The Services

- ▶ If a Federally-listed species, critical habitat, or Essential Fish Habitat may be affected, the Services will provide measures that can be implemented to ensure emergency actions will not jeopardize the continued existence of the species, or destroy or adversely modify critical habitat.

- This is an expedited “Informal Consultation”.
- **Formal** consultation will be initiated as soon as the emergency is under control.



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 - This is an expedited “Informal Consultation”.
 - Formal consultation will be initiated as soon as the emergency is under control.
 - During formal consultation, the Corps will provide the Services with a description of the emergency action and why it was needed, justification for the expedited consultation prior to implementation of the action, and **impacts of the action on listed species or critical habitat.**



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 - This is an expedited “Informal Consultation”.
 - Formal consultation will be initiated as soon as the emergency is under control.
 - During formal consultation, the Corps will provide the Services with a description of the emergency action and why it was needed, justification for the expedited consultation prior to implementation of the action, and impacts of the action on listed species or critical habitat.
 - The Services are required to write a **Biological Opinion** in response to the Corps’ formal consultation. The BO will include the information and recommendations given during the informal emergency consultation.



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Regional General Permit 8

- **Agency Processes – The SHPO / ACHP**
 - ▶ **If the proposed undertaking can reasonably be expected to affect a potentially eligible or designated historic property, the Corps will make a reasonable effort to receive comments from the SHPO and ACHP, and will comply with our Procedures for the Protection of Historic Properties “Appendix C” to the extent that time allows.**
 - As with the Services, the Corps will consider and respond to any comments, implementing recommended measures into the permit decision wherever possible.
 - There is no requirement to consult after the emergency work is initiated.



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SPD Regulatory Program Emergency Procedures

- QMS 12502-SPD



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SPD Regulatory Program Emergency Procedures

▪ QMS 12502-SPD

- ▶ Applicant submits all relevant information to the District, just as with RGP 8.
- ▶ District Engineer determines it's an emergency under our regulations.
- ▶ District makes a reasonable effort to obtain and respond to federal, state, public, and tribal comments.
- ▶ District will consult with the Council on Environmental Quality in the event the emergency response would result in significant environmental impact.
- ▶ The District should confirm that an application for Section 401 Water Quality Certification has been submitted to and received by the certifying agency. The District should further explain to the certifying agency the nature of the emergency, and specify a date by which the certification should be issued. (If it is not issued by this date, the Corps will consider it waived).



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The Corps cannot issue a permit until the 401 WQC is issued, waived, or denied!!



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SPD Regulatory Program Emergency Procedures

▪ QMS 12502-SPD

- ▶ The District will draft Special Conditions that the District feels are appropriate.
- ▶ The District will submit a request for authorization to use special procedures to the Division Commander. The package will be submitted electronically, and will contain (but is not limited to):
 - All of the information provided by the Applicant.
 - A justification for use of special procedures.
 - A summary of all comments received, and the evaluation of those comments.
 - A statement regarding conformance with state water quality certification requirements.
 - A statement regarding compliance with ESA and NHPA.
 - All proposed avoidance, minimization, and mitigation measures.
 - The draft Special Conditions.



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SPD Regulatory Program Emergency Procedures

▪ QMS 12502-SPD

- ▶ The Division will provide a written response within 12 hours, unless in a case of extreme urgency, where the response will be verbal, followed by written confirmation.
 - In these very urgent cases, the District will provide the prospective permittee with a list of the draft special conditions by email or fax, which the prospective permittee shall acknowledge by return email or fax as being acceptable.
- ▶ The District, after receiving both authorization from the Division Engineer, and the 401 Water Quality Certification, can then issue a permit, incorporating any special conditions deemed appropriate by the Division Engineer.



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SPD Regulatory Program Emergency Procedures

- **QMS 12502-SPD**

- ▶ Post-Authorization:

- Complete formal Section 7 consultation
 - Publish a Public Notice within 30 days of Division Engineer's authorization, detailing any special procedures authorized and the rationale for their use.



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Questions?



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