

SACRAMENTO DISTRICT REGIONAL GENERAL PERMIT 8 FOR EMERGENCY REPAIR AND PROTECTION ACTIVITIES

Regulatory Program Workshop
November 20, 2024

Matt Hirkala

Project Manager, California Delta Section
Regulatory Division, Sacramento District USACE

matthew.j.hirkala@usace.army.mil

Ph. 916.557.5148



**US Army Corps
of Engineers®**



12/5/2024



FIRST STEP: CONSIDER OTHER POSSIBLE OPTIONS THAT MAY NEGATE NEED FOR RGP 8

- No Permit Required: Activities that fall outside of the Corps' Regulatory jurisdiction
 - Work outside waters of the U.S.
 - Placement of pilings in non-Section 10 waters.
 - Clean excavation in non-navigable waters.
- Non-Notifying Nationwide Permit
 - Activities that are/may be regulated but activity is below notification threshold of NWP.
 - E.g., less than 0.10 acre of loss of waters of the U.S. (depends on applicable NWP...)
 - No effect to federally-listed species, cultural resources or Section 408 (Corps projects).
 - Still need to comply with NWP's conditions including Section 401 approval or waiver.
- Exemptions: Activity-based exemptions under Section 404F of the CWA
 - Includes in-kind maintenance and emergency repairs, as well as certain agricultural and silvicultural activities.
 - Other types of 404 exemptions, but this likely most common for applicability here.



DEFINITION OF AN EMERGENCY

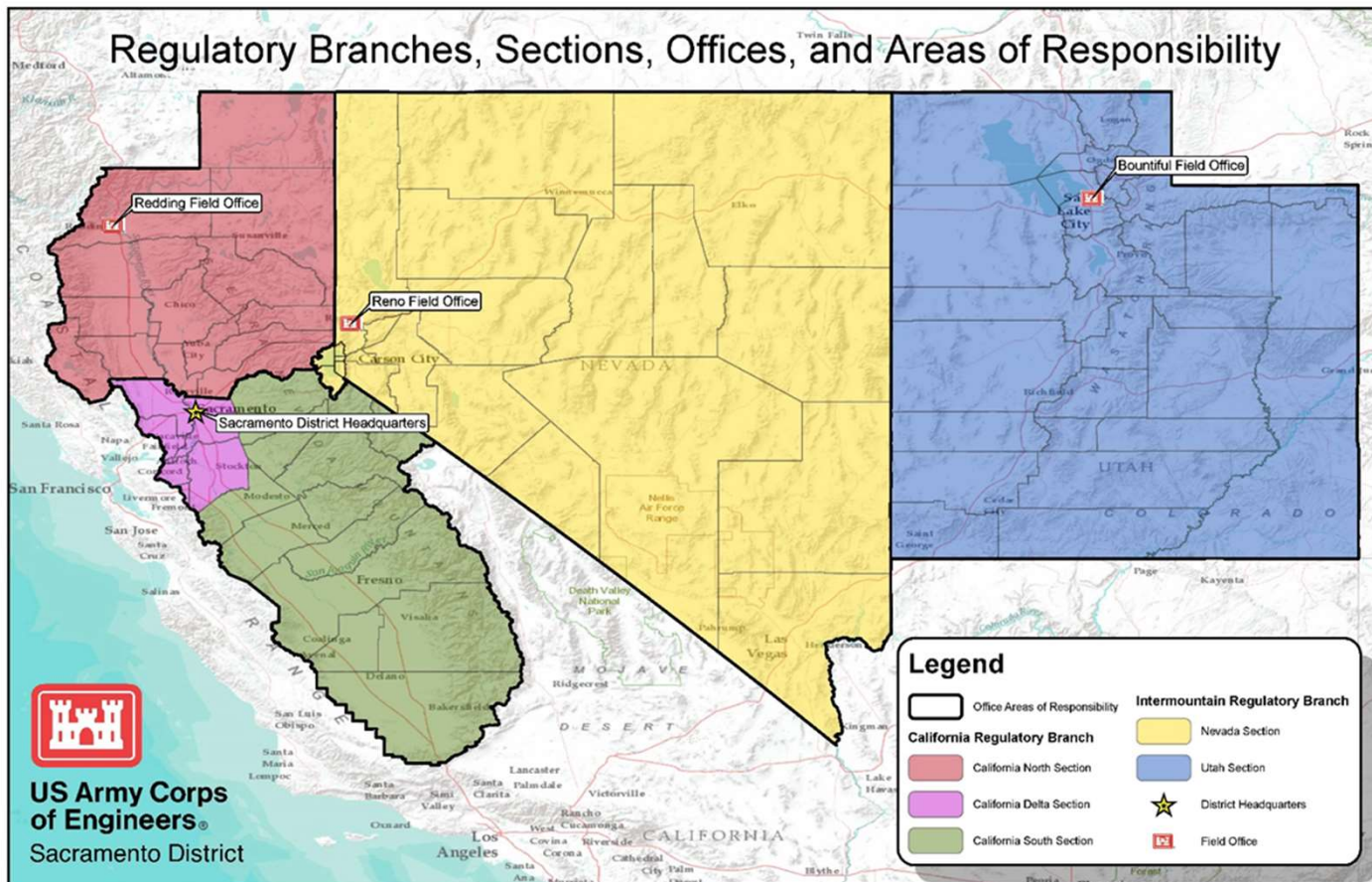
Regulatory Program Definition [33 CFR 325.2(e)(4)]

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.*

The situation must meet the Regulatory Program definition of “emergency” to qualify for RGP 8



RGP 8 APPLIES THROUGHOUT SACRAMENTO DISTRICT (SPK)





GENERAL OVERVIEW OF RGP 8

- Provides authorization under Section 10 of the Rivers and Harbors Act of 1899 (RHA) for structures or work in or affecting navigable WOUS and Section 404 of the Clean Water Act (CWA) for the discharge of dredged or fill material in WOUS.
- For the repair, replacement, or rehabilitation of existing structures or fills.
- Typical activities: bank stabilization; restoration of damaged areas; temporary fills for staging, access, and dewatering; and, repair, replacement, or rehabilitation of existing structures and/or fills (i.e., roads, bridges, utility pipelines and flood control structures, including attendant features, irrigation pumps or intakes, and other existing structures located in WOUS).
- Activity shall be the minimum necessary to alleviate the immediate emergency unless approved by the Corps.



GENERAL OVERVIEW OF RGP 8

- Allows for minor deviations in the structure or fill area, including upgrades are authorized due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards.
- Must use suitable materials – no trash, debris, car bodies, or asphalt.
- Bank stabilization done with nature-based stabilization techniques – unless waived by the Corps.
- Bank stabilization must not exceed 1,000 feet – unless waived by the Corps



GENERAL OVERVIEW OF RGP 8

- Work in WOUS may begin after receiving Corps notification that project is authorized under RGP 8.
- If immediate action is required, the Corps may informally authorize the activities under the RGP, and subsequently complete agency coordination and formal authorization.
- Must start work within fourteen (14) calendar days of receiving authorization. Applicant has 180 calendar days from start of construction to complete the work.
- If the property associated with this permit is sold, the verification shall be transferred the new owner by submitting a letter to this office to validate the transfer.



COMPLIANCE WITH OTHER LAWS

➤ **Must comply with federal, state, or local authorizations required by law:**

- Federal Endangered Species Act.
- Magnuson-Stevens Fishery Conservation and Management Act.
- National Historic Preservation Act.
- Migratory Bird Treaty Act.
- Bald and Golden Eagle Protection Act.
- Must comply with applicable FEMA-approved state or local floodplain management requirements.
- Prior to work in the National Wild and Scenic River System (or in a "study river") must receive authorization from the federal agency with direct management responsibility.



COMPLIANCE WITH 408

- An activity that requires Section 408 permission is not authorized by this RGP until the appropriate Corps office issues the Section 408 permission (General Condition #25).
- What is Section 408 permission? Corps' Section 408 Permissions Section reviews applications for the alteration of a Corps Civil Works project, like a dam, levee, or waterway. For example, a personal dock.
- Regulatory coordinates with Section 408 Permissions Section (Operations Division)
- Case-by-case coordination outcome. For example, Section 408 Permissions may guide for the applicant to work with the non-federal sponsor in compliance with the project's Operations & Maintenance manual.
- For additional information regarding the Corps' Section 408 program:
 - Section 408 Permissions: <https://www.spk.usace.army.mil/408permissions/>
 - National Levee Database: <https://levees.sec.usace.army.mil/#/>



NOTIFICATION PROCEDURES: APPLICANT'S RESPONSIBILITIES



- Applicant contacts the Corps in writing or by email ASAP:
SPKRegulatoryMailbox@usace.army.mil.
- May be a letter containing required information.
- Standard individual permit application form ENG 4345: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>.
- Notification shall contain all information for each single and complete project.



NOTIFICATION PROCEDURES: CORPS' RESPONSIBILITIES



➤ **Within one (1) business day following receipt of the Notification, the Corps will:**

- Acknowledge receipt of Notification.
- Provide contact information for the assigned Regulatory PM.
- Review completeness of the Notification; or list what is needed
- If project fits under RGP 8, and, if not, instructions on how to apply for applicable permit (NWP, other Regional/Programmatic General Permit, LOP, or Standard Permit).
- Provide and estimated time frame for completion of review of the proposed action.



AGENCY AND TRIBAL COORDINATION

- Within one (1) business day following receipt of the complete Notification, the Corps will forward the Notification package to appropriate federally-recognized tribes and the following agencies:
- **California**: U.S. Environmental Protection Agency (USEPA) Region 9, USFWS and/or NMFS, California Department of Fish and Wildlife, California State Historic Preservation Officer (SHPO), California State Water Resources Control Board, and Regional Water Quality Control Board.
 - **Nevada**: USEPA Region 9, USFWS, Nevada Department of Wildlife, Nevada Division of Environmental Protection (NDEP), Nevada Division of Emergency Management, Nevada Division of State Lands (DSL), and the Nevada SHPO.
 - **Utah**: USEPA Region 8, USFWS, State of Utah Department of Environmental Quality (UDWQ), Utah Division of Water Resources, Utah Division of Wildlife Resources, and the Utah SHPO.



AGENCY NOTIFICATION AND INTERNAL COORDINATION

➤ Agency Notification:

- Request substantive, project-specific comments from the agencies.
- Corps will set a suspense date for comments.
- Corps will fully consider comments to ensure the net adverse environment effects of the proposed activity are no more than minimal.
- Corps may request a response to the comments from the applicant.

➤ Internal Coordination:

- Conduct internal coordination to determine whether the proposed action also requires permission from the Corps pursuant to 33 USC 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project. If it is determined that the activity requires Section 408 permission(s).

Upon completion of agency and internal coordinations, Corps will notify you by letter if the project is authorized under this RGP.



APPLICANT RESPONSIBILITY: POST-PROJECT REPORTING

14



- **General Condition 27** - Provide a report within 30 days following completion of construction activities in WOUS, or within 30 days following restoration of temporary fill areas as required by General Condition 25. The report shall include the following:
- A. A complete description of the work completed for each single and complete project, including any deviations from the activities in WOUS authorized by this RGP, and the reason(s) for the deviations;
 - B. Drawings of the authorized work conducted for each single and complete project, and any on-site and/or off-site permittee responsible compensatory mitigation. The drawings shall include a plan-view drawing of the location of the authorized work (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings, and a cross-section view drawing where appropriate (e.g., linear transportation activities, utility line trench activities, bank stabilization activities), of the work as constructed. The plan-view drawing(s) shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any onsite and/or off-site mitigation and/or avoidance areas. Please note that any substantial deviations from the work as authorized, which result in additional impacts to WOUS requiring authorization, must be coordinated with the appropriate office prior to impacts;



APPLICANT RESPONSIBILITY: POST-PROJECT REPORTING



➤ General Condition 27 - Continued

- C. Numbered and dated pre-and post-construction color photographs of (1) the work conducted within a representative sample of the permanently filled WOUS, (2) all of the partially filled WOUS, and (3) all avoided WOUS on and immediately adjacent to the project area. The compass angle and position of all photographs shall be identified on the plan-view drawing(s) required in subpart (a) of this Regional Condition;
- D. Information to show construction of each authorized single and complete project was conducted in accordance with all General Conditions and Special Conditions placed on the RGP verification;
- E. A description and photo-documentation of all BMPs, and construction limit markers, required to be installed by General Conditions 14 and 15; and



APPLICANT RESPONSIBILITY: POST-PROJECT REPORTING

16



➤ General Condition 27 - Continued

- F. A description and photo-documentation of all temporary fill area(s) restored to pre-project contours and conditions required by General Condition 25, including photo-documentation of the horizontal marker(s) installed. For temporary fill areas within WOUS that have not been restored to pre-project contours or conditions, a description and photo-documentation of the temporary fill within WOUS, including information on why restoration has not been completed.



401 WATER QUALITY CERTIFICATIONS: SPK

APPLY FOR A 401 WATER QUALITY CERTIFICATION CONCURRENTLY WITH RGP 8

- **Certifying authorities in all three states within SPK have issued a general water quality certification or order for projects verified under RGP 8 on non-tribal lands.**
 - California State Water Resources Control Board issued a General Order (WQ 2023-0061-DWQ) on August 1, 2023.
 - Nevada Division of Environmental Protection issued a general certification (NV-401-23-026) on August 22, 2023.
 - Utah Division of Water Quality a general certification (DWQ-2023-06003) on August 21, 2023.
- **U.S. Environmental Protection Agency Regions 8 and 9 issued general water quality certifications for projects verified under RGP 8 on certain tribal lands within SPK.**



401 WATER QUALITY CERTIFICATIONS: CALIFORNIA

➤ **Regional Water Quality Control Board** and the **California State Water Resources Control Board**

- For RGP activities on non-tribal lands in California that result in the discharge of dredged or fill material to waters of the United States, Clean Water Act Section 401 Water Quality Certification is required from the applicable Regional Water Quality Control Board or State Water Resources Control Board.
- Section 401 permitting options include certification under a General Order or an individual water quality certification.
- Projects authorized under RGP 8 may be certified under State Water Board's General Water Quality Certification for RGP 8 (General Order) if eligibility criteria are met.



401 WATER QUALITY CERTIFICATIONS: CALIFORNIA

➤ Eligibility Criteria for a CA Section 401 General Order for RGP 8

- Project must be authorized by the Corps under RGP 8.
- CEQA must be suspended under California Emergency Services Act or must meet CEQA definition of an emergency:

A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

- CEQA definition of emergency differs from Corps' definition in RGP 8 (does not include an immediate, unforeseen, and significant economic hardship).



401 WATER QUALITY CERTIFICATIONS: CALIFORNIA

20



➤ Application Process CA Section 401 General Order for RGP 8

- Notify appropriate Regional Water Quality Control Board (Regional Water Board) and State Water Board no less than 48 hours prior to commencement of emergency project.
- If 48-hour prior notice is not possible, provide notice within 1 business day of initiation of emergency project.
- Must submit a Notice of Intent (NOI) and application fee to appropriate Regional Water Board within 3 business days of notification.
- Regional Water Board issues a Notice of Applicability (NOA) to the Enrollee (i.e., project proponent) once a complete NOI is received and eligibility under General Order is verified.



401 WATER QUALITY CERTIFICATIONS: CALIFORNIA

21



➤ Conditions* for CA Section 401 General Order for RGP 8

- Enrollee must comply with conditions in General Order.
- Emergency repairs and construction limited to minimum necessary to alleviate the immediate emergency.
- Project must commence within 14 days of issuance of NOA (i.e., the enrollment date).
- Authorized work must be completed within 180 days of enrollment date.
- Enrollee may request an extension at least 30 days prior to expiration date.

* See General Order for all permit conditions.



401 WATER QUALITY CERTIFICATIONS: CALIFORNIA

➤ Conditions* for CA Section 401 General Order for RGP 8

- Notice of Applicability (NOA) may require compensatory mitigation to offset unavoidable adverse impacts to aquatic resources.
- NOA may require water quality monitoring.
- Monthly and/or annual reporting may be required in addition to general notification and reporting requirements.
- Notice of Completion required within 45 days following project completion.

* See General Order for all permit conditions.



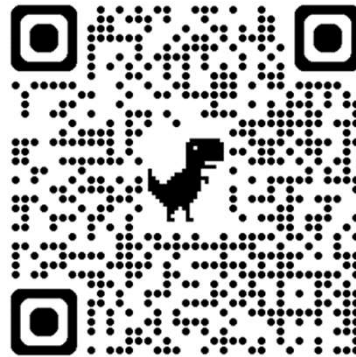
https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html#yr_2023



401 WATER QUALITY CERTIFICATIONS: CALIFORNIA

Section 401 Questions in California?

Regional Water Quality Control Board Contacts





SECTION 401 WATER QUALITY CERTIFICATION: NEVADA

➤ Nevada Division of Environmental Protection

- Defer to the Corps definition of emergency.
- Includes 14 Conditions including 12 General Conditions (numbered 1 through 12) and two Special Condition (numbered 13 and 14).
- Special Condition 13 outlines pre-construction notification – requires concurrent notification with the Corps.
- Special Condition 14 outlines post-project reporting requirements = RGP 8 General Condition 27.

See Certification for all permit conditions.



SECTION 401 WATER QUALITY CERTIFICATION: NEVADA

Section 401 Questions in Nevada?

Nevada Division of Environmental Protection

Bureau of Water Quality Planning

901 South Stewart Street, Suite 4001

Carson City, Nevada 89701-5249

Zachary Carter, Environmental Scientist III

Telephone: (775) 687-9456

Email: zcarter@ndep.nv.gov

Website: [https://ndep.nv.gov/water/rivers-streams-lakes/401- certification](https://ndep.nv.gov/water/rivers-streams-lakes/401-certification)



SECTION 401 WATER QUALITY CERTIFICATION: UTAH

26



➤ Utah Division of Water Quality

- Includes 10 Certification Conditions (A through J).
- Certification Condition A outlines notification procedures.
- Section VI provides condition justification and citation – outlines the review process.
- See Blanket RGP 8 Section 401 Water Quality Certification for all permit conditions.



SECTION 401 WATER QUALITY CERTIFICATION: UTAH

27



Section 401 Questions in Utah?

Linsey Shafer

Environmental Scientist

Division of Water Quality

Telephone: (385) 405-4158

Email: lrshafer@utah.gov

Website: <https://deq.utah.gov/water-quality/water-quality-permits#401>



PROCESS TIPS

➤ Most Common Causes of Delays:

- Not enough information to determine if it is an emergency as defined by the Corps.
- Delay in submitting 401 Certification Application.

➤ Additional Information:

- <https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Regional-and-Programmatic-General-Permits/>
- <https://www.spk.usace.army.mil/Missions/Regulatory/>
- <https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Endangered-Species-Agency-Consultations/>



THANK YOU

QUESTIONS?

Matt Hirkala

Project Manager, California Delta Section
Regulatory Division, Sacramento District

matthew.j.hirkala@usace.army.mil

Ph. 916.557.5148