

GENERAL PERMIT NO. 12
FOR UTILITY LINE ACTIVITIES
WITHIN CRITICAL RESOURCE WATERS IN OKLAHOMA

In accordance with Title 33 CFR 325.5(c), published November 13, 1986, in the Federal Register, the District Engineer (DE), U.S. Army Corps of Engineers, Tulsa District, proposes to revise Department of the Army General Permit No. 12 for all Utility Line Activities (electric, water, fiber optic, natural gas, oil) within Critical Resource Waters (CRW) in Oklahoma. CRW include Outstanding Resource Waters (ORW) and their watersheds and High Quality Waters (HW) as identified and designated in Oklahoma Water Quality Standards (OWQS), OAC 252: Chapter 730. This GP is reissued pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Expiration: This GP is set to expire on January 31, 2030.

Scope of Work: Work authorized by this GP would be limited to activities required for the construction, maintenance, repair, and protection of utility lines and associated facilities in waters of the United States, including adjacent wetlands, as follows:

- a. Utility Lines: The construction, maintenance, repair, and protection of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, provided there is no change in preconstruction contours. 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 (see Note 1). Material resulting from trench excavation may be temporarily sidecast below the Ordinary High Water Mark in dry areas a minimum of 5 feet away from the wetted perimeter of the stream, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each waterbody.
- b. Foundations for Overhead Utility Line Towers, Poles, and Anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.
- c. Access Roads: The construction of access roads for the construction, maintenance, and protection of utility lines, including overhead power lines and utility line substations is authorized, provided the discharges do not cause the loss of greater than 1/2 acre of

non-tidal waters of the United States. Access roads shall be the minimum width necessary (see Note 2). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to preconstruction contours and elevations (e.g., at-grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

The following activities are not authorized by this GP:

- (1) Utility lines exceeding 500 feet in length in waters of the United States, excluding overhead lines.
- (2) Permanent access roads constructed above grade a distance of more than 500 feet in waters of the United States.
- (3) Permanent access roads constructed in waters of the United States with impervious materials.

The permit applicant is required to notify the Corps prior to the use of this GP in accordance with the notification procedures below. For discharges in special aquatic sites (wetlands, stream riffle and pool complexes, sanctuaries and refuges, and vegetated shallows), the notification must include a delineation of the affected special aquatic site.

The term "utility line" does not include activities which drain a water of the United States, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this GP, the loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraphs (a)-(c) may not exceed a total of 1/2-acre loss of waters of the United States. Waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, are not included in the calculation of permanent loss of waters of the United States. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the United States are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, repair, or protection of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This

GP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR Part 322).

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this GP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by Nationwide Permit (NWP 33) for Temporary Construction, Access, and Dewatering.

Location of Work: This GP is applicable to all CRW waters within the state of Oklahoma, excluding:

- (1) defined archeological and historical sites,
- (2) sites listed, or eligible for listing, in the National Register of Historic Places, and
- (3) State Historic Sites.

Critical Resource Waters:

<https://www.swt.usace.army.mil/Portals/41/docs/missions/regulatory/WQC/CRW.pdf>

Duration: This GP would be in effect for a period of 5 years from date of issuance, unless it is specifically modified, suspended, or revoked. Upon its expiration, the GP would be considered for renewal. The GP may be modified, suspended, or revoked, in whole or in part, at any time, if the District or Division Engineer (DE) determines that the proposed project or cumulative effects of its activities would have more than minimal adverse environmental impacts or may be contrary to public interest. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the GP will remain authorized provided the activity is completed within twelve months of the date of the GPs expiration, modification, or revocation. Work previously authorized by this GP would not be affected by subsequent modification, suspension, or revocation of the GP.

If the DE determines that the adverse effects of the proposed work are more than minimal, then he would notify the applicant either (1) that the project does not qualify for authorization under the GP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the GP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or (3) that the project is authorized under the GP with

specific modifications or conditions.

Water Quality Certification (WQC): A Section 401 WQC is required prior to reissuance of the revised RGP.

Other Authorizations: Individuals considering work on lands or waters under the jurisdiction of other federal, state, or local agencies would be responsible for obtaining any permits required by such agencies.

Notification Procedure: Persons desiring to perform work under this GP would furnish notification to the Corps, Tulsa District as early as possible prior to the anticipated construction date. The prospective permittee shall not begin the activity:

- (1) Until notified by the DE that the activity may proceed under the GP with any special conditions imposed by the District or Division Engineer; or
- (2) If notified by the District or Division Engineer that an individual permit is required, until after the individual permit has been evaluated and issued.

The notification must be in writing and may be submitted on a Department of the Army Permit Application (Eng Form 4345). If construction and material placement is to be in a Corps lake, the information must be sent through the appropriate Area/Lake Manager. Information for work in all other locations should be sent directly to the District Engineer, U.S. Army Corps of Engineers, Tulsa District, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137-4290. The content of the notification must include the following information:

- (1) Name, address, and telephone number(s) of the prospective permittee.
- (2) Location of the proposed project and a vicinity map. The location of the proposed work may be shown on a 7.5 minute USGS quadrangle map.
- (3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional GP(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity.
- (4) Delineation of any special aquatic sites (wetlands, stream riffle and pool complexes, sanctuaries and refuges) to be affected by the proposed construction.
- (5) A site plan view. This should be drawn to show any delineated wetland, existing embankments, flow direction, property boundaries, adjoining property owners, directional north, the proposed activity with distances and dimensions, excavation and fill areas, and the quantity of excavation and fill.
- (6) A cross-section or profile view. This should be drawn to indicate excavation and fill areas, fill types, existing and proposed contours of the stream and embankment, and the water depth.
- (7) Information on any temporary features to be constructed (such as a work road) including the location, dimensions, quantities, source of borrow materials, water management design, timing and duration, and removal and restoration parameters.
- (8) A description of alternative routes and designs considered for avoiding and minimizing impacts to the aquatic ecosystem. The submitted information should support that the proposed project is the least environmentally damaging practicable

alternative.

(9) Mitigation: Mitigation will be required for all stream impacts exceeding 0.03 acre and 0.10 acre of wetlands. Mitigation shall be proposed in accordance with the Tulsa District Aquatic Resource Mitigation and Monitoring Guidelines, (current version); and Title 33 Part 332 - Compensatory Mitigation for Losses of Aquatic Resources, and the Oklahoma Stream Mitigation Method. All mitigation plans must be approved by the Corps. The amount of mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions. The notification must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required.

(10) A title block should be included on each page of the drawings. The title block should include the proposed activity, applicant, waterbody, and county/state.

(11) If the project is to be located in a lake not operated by the Corps, written approval from the owner/manager must be furnished.

Verification Procedure: Upon receipt of a complete GP application, the Corps will expeditiously provide a copy of the request to the following:

1. Tribal Government(s) Tribal Historic Preservation Officer (THPO) to Cherokee Nation, Chickasaw Nation, Choctaw Nation, Osage Nation, Muscogee (Creek) Nation, Pawnee Nation (When project occurs within Pawnee Area of Interest), Seminole Nation (When projects lie within exterior boundary of reservation), and as applicable to Miami Tribe, Ottawa Tribe, Peoria Tribe, Quapaw Nation, Alabama-Coushatta Tribe of Texas and other tribal THPO.
2. Oklahoma Department of Environmental Quality
3. SHPO, OAS, if the Corps determines that the proposed project has the potential to affect historic properties listed, or eligible for listing, in the National Register of Historic Places.
4. USFWS, if the Corps determines that the proposed project has the potential to affect federally listed threatened or endangered species or critical habitat.
5. Environmental Protection Agency for Indian Country

The Corps will request site-specific comments on the proposed project be submitted to the Corps within **30** days of the notification. The Corps will request comments related to matters within the commenting agency's expertise respectively (i.e., proximity to known archeological or cultural resources, special water quality considerations, or endangered species). The Corps will fully consider comments provided by these agencies in the determination of whether the project shall proceed under the GP.

If the DE determines that the proposed work meets the provisions of the GP, and no extraordinary conditions exist that would warrant filing for a standard permit, the Corps would notify the applicant by letter that the project falls under this GP.

If the DE determines that the proposed work does not meet the provisions of the GP, or that extraordinary conditions exist, the Corps would notify the applicant that filing for a

standard permit would be necessary. The applicant should be aware that additional evaluation time will be required for a final decision on any individual permit application submitted subsequent to disqualification under the GP.

Wetland Delineation Manual Regional Supplements: The Corps Manual provides technical guidance and procedures, from a National perspective, for identifying and delineating wetlands that may be subject to Regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) or Section 10 of the Rivers and Harbors Act (33 U.S.C. 403). Information on the Regional Supplements can be found at: <http://www.swt.usace.army.mil/Missions/Regulatory/Wetlands/>

Mitigation: Discharges of dredged or fill material into waters of the United States must be avoided or minimized to the maximum extent practicable at the project site. Compensation for unavoidable discharge of fill materials may require appropriate mitigation measures.

Information on Mitigation requirements is located in 33 CFR Part 332 and the current version of the Tulsa District Aquatic Resource Mitigation and Monitoring Guidelines can be found at: <http://www.swt.usace.army.mil/Missions/Regulatory/Mitigation/>. All mitigation plans must be approved by the Corps.

Conditions of GP: All work authorized under this GP would be subject to GP 12 Specific Conditions (Enclosure 1).

Approved By:

/s/

Timothy P. Hudson

Enclosures

GENERAL PERMIT
SPECIFIC CONDITIONS

1. Permittee Construction Schedule Notification: Complete and return the enclosed "Permittee Construction Schedule" form. Should construction be initiated prior to 30 days from authorization of this project, please return the completed form as soon as possible or email CESWT-RO@usace.army.mil. If you prefer, you may telephone 918-669-7400 to inform the U.S. Army Corps of Engineers regarding the construction start date.
2. Compliance Certification: Every Permittee who has received GP verification from the Corps shall submit a signed certification regarding the completed work and any required mitigation. The certification form will be provided by the Corps with the authorization letter and will require:
 - a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
 - b. A statement that any required mitigation was completed in accordance with the permit conditions; and
 - c. The signature of the permittee certifying the completion of the work and mitigation.
3. Utility Line Debris: To the maximum extent practicable, all demolition materials generated in the vicinity of the permit site shall be removed from the waterway. These materials include, but are not limited to, asphalt, metal, wood, and concrete.
4. Vegetation Plan, Restoration Plan, and Compensatory Mitigation Plan: The Permittee shall ensure that the vegetation plan, restoration plan or compensatory mitigation plan be executed.
 - a. During construction, the clearing of vegetation (especially stream-shading trees) shall be kept to the minimum necessary in the right-of-way (ROW).
 - b. Disturbed areas shall be returned as closely as possible to the original topographic contours and reestablished with stabilizing vegetation promptly following completion of construction.
 - c. Measures must be taken to ensure the survivability of all planted vegetation.
 - d. The permittee shall only use native vegetation in revegetating the project site following completion of construction. Native grasses are recommended, and the use of the on-site impacted wetland seedbed is recommended to be used for restored wetlands.
 - e. Blanket spraying of broadleaf herbicides in ROW shall be avoided.
 - f. Verification: Your responsibility to complete the required vegetation plan, restoration plan and/or compensatory mitigation as set forth in Special Condition 4 will not be considered fulfilled until you have demonstrated restoration or compensatory mitigation project success and have received written verification of

that success from the U.S. Army Corps of Engineers.

5. Erosion Control Measures (ECM): The Permittee shall ensure execution and compliance with proper ECM installation and use for the duration of the project to prevent soil erosion and subsequent stream sedimentation. ECM shall be inspected and maintained on a daily basis. Barriers shall remain in place and effective until sufficient vegetation coverage on exposed areas is established. All exposed earthen areas, disturbed or newly created by the construction, shall be seeded immediately, replanted, or provided equivalent protection against subsequent erosion within 24 hours.
6. Modification, Suspension, and Revocation of General Permits:
 - a. This permit may be modified, suspended, or revoked by the DE in accordance with 33 CFR 1344, Part 325.7(a)-(e).
 - b. The DE will immediately suspend activities authorized herein, upon finding the immediate suspension will be in the general public interest.
 - c. The DE upon suspension will provide the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the DE to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice.
 - d. Within 10 days following receipt of this notice of suspension, the permittee may request a meeting with the DE or request a hearing in order to present information relevant to a decision as to whether his/her permit shall be reinstated, modified, or revoked.
 - e. This permit may be either modified, suspended, or revoked, in whole or in part, if the Secretary of the Army or his/her authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action will otherwise be in the public interest.
 - f. In issuing this permit, the Government has relied on the information and data, which the permittee has provided in connection with his/her permit application. If subsequent to the issuance of this permit, such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.
 - g. Any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.
7. Stockpile Area: Stockpile areas shall not be located in a water of the United States or adjacent wetland. The Permittee shall incorporate ECM along the entire perimeter of the stockpile area to prevent excavated material from eroding into adjacent wetlands or waters. Stockpile locations shall be placed outside of the 25-year floodplain.
8. Monitoring for Stream Impacts: The permittee shall monitor the streambank for destabilization for a period of 2 years. If stream destabilization occurs during this

period, the permittee shall notify the Corps, Regulatory Office immediately in writing. This report shall assess the condition of the stream. The permittee shall include photographs of the stream channel and degraded area. After notification is made, the permittee may be required to submit a detailed plan discussing how to repair the problem while providing minimal effects to the waters of the United States.

9. Project-Specific Locations Pre-Construction Meeting: The Permittee shall conduct a meeting with the contractor(s) detailing the terms and conditions of this GP prior to commencing construction activities of the project. Within three weeks following the meeting, the Permittee will also provide written confirmation to the Corps that the meeting was held and addressed haul roads, staging areas, borrow sites, disposal sites, and other off project facilities. The Permittee shall not start until Project-Specific Locations Pre-Construction Meeting has been completed to ensure that the project will protect water quality, avoid wetlands, and avoid known historic properties as well as tribal interests.

10. Navigation:

- a. 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/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, 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;
- b. No activity may cause more than a minimal adverse effect on navigation and;
- c. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

11. Aquatic Life Movements: No activity may substantially disrupt the necessary lifecycle movements of indigenous aquatic species, including mussels, which normally migrate through the area. Culverts placed in streams shall be installed to maintain low-flow conditions.

12. Spawning Areas: Discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavation, filling, or smothering downstream by substantial turbidity) of an important spawning area are not authorized.

13. Waterfowl Breeding Areas: Discharges of dredged or fill material, in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

14. Suitable Material: No discharges of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see

Section 307 of the Clean Water Act). The use of asphaltic rubble is prohibited and may not be used for bank stabilization. Suitable material shall consist of rock, stone, vegetative erosion control measures, broken concrete (without exposed reinforcing bar) and when applicable, clean soil. Concrete rubble may be used only if exposed rebar is cut-off flush with the face of the rubble. Material used for bank stabilization or fill shall consist of suitable material free from toxic contaminants in other than trace quantities.

15. Water Supply Intakes: No activity or discharges of dredged or fill material, may occur in the proximity of a public water supply.

16. Adverse Effects from Impoundments: If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

17. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and stormwater management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

18. Fills within 100-Year Floodplains: The activity must comply with applicable FEMA approved state or local floodplain management requirements.

19. Equipment: Heavy equipment working in wetlands shall be placed on mats, or other measures must be taken to minimize soil disturbance.

20. Temporary Fills and Temporary Work Road: Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation and revegetated. All material for the temporary work road shall be removed and the channel bottom shall be restored to original contours. The use of materials containing asphaltic rubble is prohibited and may not be used for bank stabilization or used for construction of a temporary work road.

21. Reserved.

22. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

23. Endangered Species Act:

a. No activity is authorized under any GP which is likely to 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 destroy or adversely modify the critical habitat of such species. If any listed species

or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, the permittee shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized.

b. Authorization of an activity by a GP 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 USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the office of the USFWS or their website at <http://www.fws.gov/southwest/es/EndangeredSpecies/>.

24. Migratory Birds and Bald and Golden Eagles: The permittee is responsible for obtaining any "take" permits required under the USFWS regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee shall contact the appropriate local office of the USFWS to determine if such "take" permits are required for a particular activity.

25. Historical Properties:

a. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee shall immediately notify the DE, if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. The DE may stop work if he/she determines that archeological investigations are warranted.

b. If you discover any previously unknown historical or archaeological material/remains, you shall stop work and immediately contact the Corps, Regulatory Office at 918-669-7400.

26. Reserved.

27. Property Rights: This permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations, nor does it obviate the requirement to obtain other federal, state, or local assent required by law for the activity authorized herein.

28. Proper Maintenance: The permittee shall maintain the structure or work authorized herein in good condition, including maintenance to include public safety. If and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party, he/she must restore the area to a condition satisfactory to the DE.

29. Inspection: The permittee shall allow the DE or his/her authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

30. Fuel and Materials: Any material and fuels used in the project shall be stored and/or stockpiled above the ordinary high-water mark and shall be removed from a likely flood zone prior to any predicted flood.

31. 401 Water Quality Certification: The attached Water Quality Certification must be adhered to.

32. Soil Erosion and Sediment Controls: 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.

33. Transfer of General Permit Verifications: If the permittee sells the property associated with a GP verification, the permittee may transfer the permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the permit verification must be attached to the letter, and the letter must contain the following statement and signature:
"When the structures or work authorized by this General Permit are still in existence at the time the property is transferred, the terms and conditions of this permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this General Permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

34. Compliance: All activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension, or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions Number 6 hereto, and in the institution of such legal proceedings as the U.S. Government may consider

appropriate, whether or not this permit has been previously modified, suspended, or revoked in whole or in part.

35. Minimization: The permittee agrees to make every reasonable effort to implement the work authorized herein in a manner so as to minimize any degrading of water quality, adverse impact of the work on fish and wildlife habitat, aquatic resources, and other natural environmental values.

November 20, 2024

Mr. Andrew R. Commer
Chief, Regulatory Office
U.S. Army Corps of Engineers
ATTN: Regulatory Office (CESWT-RO)
2488 E 81st Street
Tulsa, OK 74137-4290

Re: Water Quality Certification for General Permit 12 for Utility Line Activities within
Critical Resource Waters in Oklahoma (GP12), SWT-2024-00012

Dear Mr. Commer:

The Department of Environmental Quality (DEQ) has received your request for a Water Quality Certification under Section 401 of the Federal Clean Water Act (33 U.S.C. §1341) for the proposed reissuance of the General Permit 12 (GP 12) for utility line activities within Critical Resource Waters (CRW). This general permit is issued pursuant to Section 404 of the Act. DEQ rules governing 401 Water Quality Certification are contained in Oklahoma Administrative Code (O.A.C.) § 252:611-3 pursuant to 27A O.S. § 2-6-103(C)(2). DEQ rules and regulations related to the 401 procedures are available at [611.pdf \(ok.gov\)](#) or through contacting the DEQ Office of Business and Regulatory Affairs (800) 869-1400.

Work authorized by GP 12 is limited to activities required for the construction, maintenance, repair, and protection of utility lines and associated facilities in CRW, including adjacent wetlands. CRW include Outstanding Resource Waters (ORW) and their watersheds and High Quality Waters (HQW) as identified and designated in Oklahoma Water Quality Standards (OWQS), OAC 252: Chapter 730, Appendix A.

This conditioned Water Quality Certification does not supersede the requirements of a Section 404 permit from the U.S. Army Corps of Engineers, a permit required by the local floodplain board, or any other permit required for this project.

This Water Quality Certification supersedes all previous Water Quality Certifications for the General Permit 12 in Critical Resource Waters in the state of Oklahoma. The Oklahoma Department of Environmental Quality grants Clean Water Act Section 401 Water Quality Certification for the General Permit 12 for activities in Critical Resource Waters, SWT-2024-00012, subject to the following condition:

1. All spills of fuel or other pollutants in excess of five gallons shall be reported to the DEQ, within twenty-four (24) hours, to the pollution prevention hotline at 1-800-522-0206.
2. All fueling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM).
3. Appropriate procedures shall be utilized during the construction of any project to prevent the release of construction debris, fuels and lubricants, or other deleterious materials into aquatic resources.
4. Any material and fuels used in the project shall be stored and/or stockpiled above the Ordinary High Water Mark (OHWM) and shall be removed from a likely flood zone prior to any predicted flood.

5. Environmental control practices, including but not limited to, effective erosion control measures and sediment control measures, shall be utilized during construction.
6. All excess fill material, waste materials, construction debris, etc., must be removed from a construction site upon completion of the project to avoid the introduction of pollutants into aquatic resources.
7. All construction shall be done in a manner that will not increase turbidity or cause downstream deposition of bank material from the construction sites during or after construction.

If you have any questions regarding this Certification, please contact Elena Jigoulina at 405-702-8200.

Sincerely,



Joe Long, Environmental Programs Manager
Watershed Planning Section
Water Quality Division

cc: Michael Ware, Regulatory Branch, U.S. Corps of Engineers, Tulsa
Kenneth Cunningham, Fisheries Chief, Oklahoma Department of Wildlife
Conservation
Brooks Tramell, Monitoring, Assessment and Wetlands Programs, Oklahoma Conservation
Commission
Daniel Landeros, EPA Region 6 (6WQ-EM)
Jennifer Lewis, Assistant Attorney General, Oklahoma Office of the Attorney General



REGION 6

DALLAS, TX 75270

November 19, 2024

TRANSMITTED VIA EMAIL

Mr. Andrew Commer
Chief, Regulatory Office
Tulsa District, U.S. Army Corps of Engineers
2488 East 81st Street
Tulsa, Oklahoma 74137
andrew.commer@usace.army.mil

RE: Clean Water Act Section 401 Water Quality Certification for the Reissuance of the U.S. Army Corps of Engineers, Tulsa District General Permit (GP)-12, Authorization SWT-2024-00012

Dear Mr. Commer:

This grant of certification with conditions applies to the water quality-related impacts from the activity subject to the U.S. Army Corps of Engineers (USACE) general permit referenced above, including the activity's construction and operation, for potential projects authorized under the proposed GP-12 into waters of the United States that occur within Indian Country within Oklahoma. GP-12 authorizes activities required for the construction, maintenance, repair, and protection of utility lines and associated facilities in waters of the United States. These activities generally include utility lines, foundations for overhead utility line towers and anchors, and access roads.

GP-12 applies coverage only to Critical Resource Waters (CRWs) within the state of Oklahoma where permit conditions are met. The USACE public notice for GP-12 published on August 14, 2024 informed that GP-12 also applied to Sensitive Public and Private Water Supplies (SWS) and Appendix B waters. USACE later revised GP-12 to exclude SWS and Appendix B waters from coverage; therefore, this certification applies only to CRWs¹

Section 401 of the Clean Water Act requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state

¹ CRWs include Outstanding Resource Waters and their watersheds and High Quality Waters as identified and designated in Oklahoma Water Quality Standards (OWQS), OAC 252:730. Appendix B waters include but are not limited to the National and State parks, forests, wilderness areas, wildlife management areas, and wildlife refuges. Appendix B waters may also include those areas which are inhabited by federally listed, threatened, or endangered species, and other appropriate areas as designated in OWQS, OAC 252:730-5-25. SWS waters are defined as a water of the state which constitutes a sensitive public and private water supply, and which is designated as such in OAC 252:730.

agency or Tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, thirty-seven federally recognized Tribes in Oklahoma (listed below) do not have the authority to provide CWA Section 401 certification for projects occurring within the boundaries of their lands, therefore, the EPA is making the certification decision on GP-12 on these lands.

Tribes without TAS for CWA Section 401 in Oklahoma

1. Absentee-Shawnee Tribe of Indians of Oklahoma
2. Alabama-Quassarte Tribal Town
3. Apache Tribe of Oklahoma
4. Caddo Nation of Oklahoma
5. Cherokee Nation
6. Cheyenne and Arapaho Tribes
7. The Chickasaw Nation
8. The Choctaw Nation of Oklahoma
9. Citizen Potawatomi Nation
10. Comanche Nation
11. Delaware Nation
12. Delaware Tribe of Indians
13. Eastern Shawnee Tribe of Oklahoma
14. Fort Sill Apache Tribe of Oklahoma
15. Iowa Tribe of Oklahoma
16. Kaw Nation
17. Kialegee Tribal Town
18. Kickapoo Tribe of Oklahoma
19. Kiowa Indian Tribe of Oklahoma
20. Miami Tribe of Oklahoma
21. The Modoc Nation of Oklahoma
22. The Muscogee (Creek) Nation
23. The Osage Nation
24. Otoe-Missouria Tribe of Indians
25. Ottawa Tribe of Oklahoma
26. Peoria Tribe of Indians of Oklahoma
27. Ponca Tribe of Indians of Oklahoma
28. The Quapaw Tribe of Indians
29. Sac & Fox Nation
30. The Seminole Nation of Oklahoma
31. Seneca-Cayuga Nation
32. Shawnee Tribe
33. Thlopthlocco Tribal Town
34. Tonkawa Tribe of Indians of Oklahoma
35. United Keetoowah Band of Cherokee Indians of Oklahoma
36. Wichita and Affiliated Tribes
37. Wyandotte Nation

Project Description

Work authorized by GP-12 is limited to discharges of dredge or fill material into waters of the United States for activities required for the construction, maintenance, repair, and protection of utility lines and associated facilities in waters of the United States, including adjacent wetlands, provided the following:

1. Material resulting from trench excavation may be temporarily side cast below the ordinary high-water mark in dry areas a minimum of 5 feet away from the wetted perimeter of the stream, provided that the material is not placed in such a manner that it is dispersed by currents or other forces.
2. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench.
3. The trench cannot be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
4. The construction or maintenance of foundations for overhead utility line towers, poles, and anchors provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.
5. The construction of access roads for the construction, maintenance, and protection of utility lines, including overhead power lines and utility line substations is authorized, provided the discharges do not cause the loss of greater than 1/2 acre of non-tidal waters of the United States.

The following activities are not authorized by this GP:

1. Utility lines exceeding 500 feet in length in waters of the United States, excluding overhead lines.
2. Permanent access roads constructed above grade a distance of more than 500 feet in waters of the United States.
3. Permanent access roads constructed in waters of the United States with impervious materials.

Additional limitations and conditions pertaining to construction parameters, natural habitat, and cultural and historic resources can be found in the draft permit:

<https://www.swt.usace.army.mil/Missions/Regulatory/Public-Notices/Article/3872375/gp-12-public-notice/>

The EPA's Public Notice Process

On August 15, 2024, the EPA received a request for certification from the project proponent. On August 19, 2024, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until September 20, 2024. The EPA held a Tribal information session on August 26, 2024. No comments were received.

General Information

The general information in this section provided does not constitute a certification condition(s):

- Project proponents are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or Tribal authorities.

- Copies of the Corps permit including this certification should be kept on the job site and readily available to the public for reference. Project proponents should retain this certification in their files as documentation of the EPA's certification. This certification is specifically associated with the proposed GP-12 and expires five years from Corps reissuance date.
- During project planning, the project proponent should notify the appropriate Tribal environmental office(s) of the project details and location. If the project proponent needs assistance identifying the appropriate Tribal environmental office(s), the project proponent can contact EPA Region 6 at R6_CWA404_Regulatory@epa.gov.
- If a project does not meet the requirements outlined in the following certification conditions and/or the Corps specific conditions, the project is not covered by this certification. In these cases, the project proponent can contact the EPA Region 6 for a project-specific certification or for any certification-related questions by email at R6_CWA404_Regulatory@epa.gov.

Conditions

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 CWA section 401(d):

Condition 1: Prevention of Unauthorized Discharges

The project proponent shall not allow sediment, 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, unless specified in the project plan and design drawings approved by the USACE. The project proponent shall submit final design drawings to the EPA prior to beginning construction activities onsite.

Why this condition is necessary: To ensure water quality is not degraded by toxic pollutants in toxic amounts, raw materials, oil, grease, gasoline, or other construction materials.

Citation: 40 CFR 230.10(c); 40 CFR 230.10(d); 40 CFR 230.71; 40 CFR 230.75

Condition 2: Spill Prevention and Remediation

When operating equipment or otherwise undertaking construction activities in aquatic resources, the project proponent shall:

- Include in the project plan/design drawings the locations of:
 - the project site with all waters, including wetlands, clearly demarcated;
 - staging areas;
 - construction access points; and
 - disturbance limits.
- Clean all equipment prior to the equipment arriving on the project site.
- Have containment booms and/or absorbent material available onsite prior to the commencement of work. In the case of spills, the project proponent shall immediately upon identification of a spill employ containment booms and/or absorbent material to prevent discharges from reaching waters of the United States.

- Inspect all equipment daily and prior to entering any waters of the United States for oil, gas, diesel, anti-freeze, 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, the project proponent shall repair the equipment in a staging area or move it offsite.
- Clean all contaminated areas within 12 hours of spill detection and remove contaminated soil from the site within 24 hours or contain it in enclosed containers until it is removed from the site.

If spills or unauthorized discharges occur during the project, the project proponent shall notify EPA Region 6 (R6_CWA_Regulatory@epa.gov) within 12 hours from discovery. In the notification to the EPA, the project proponent shall identify the material spilled and approximate volume, and describe the measures being taken to remedying the spill or unauthorized discharge. For emergency spills, contact the EPA's National Response Center at 1-800-424-8802 and the Tribal environmental office(s) of the project details and location. If the project proponent needs assistance identifying the appropriate Tribal environmental office(s), the project proponent can contact EPA Region 6.

Why this condition is necessary: To ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species.

Citation: 40 CFR 230.10(c)-(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74

Condition 3: Dewatering/Diversion Activities

The project proponent shall submit a Dewatering/Diversion Plan to EPA Region 6 prior to initiating work onsite. Dewatering/Diversion methods and equipment may include, but not limited to trenching, cofferdams, temporary berms, and pumps. The Dewatering/Diversion Plan shall include:

- Photo-documentation of pre-construction site conditions.
 - The project proponent shall include time-stamped photo-documentation of baseline conditions (*i.e.*, 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area) prior to initiating work.
 - The project proponent shall include a site diagram indicating the location and direction where photo(s) were taken and will be taken post-construction.
- Written descriptions of the dewatering/diversion activities.
 - The project proponent shall include a description of the methods and equipment to be employed.
 - The project proponent shall include the area (acres) and length (linear feet) in waters of the United States of the structure and/or fill used for the dewatering.
 - The project proponent shall indicate the timespan that the area is to be dewatered.
- Inspection, monitoring, and maintenance measures.
 - The project proponent shall visually inspect the project site during project implementation for failure or any marked increase in turbidity associated with dewatering/diversion activities daily and within 24 hours of precipitation events.
 - The project proponent shall photo-document with a time stamp any failures or marked increase in turbidity as a result of the dewatering/diversion activity (*i.e.*, 50 feet

- upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and document on a site diagram the location and direction of the photos.
- Within 24 hours of observing a failure or marked increase in turbidity associated with dewatering/diversion activity, the project proponent shall remedy and implement any additional corrective measures to stabilize the dam and prevent further discharges into waters of the United States. The project proponent shall photo-document with a time stamp and in the same location and direction as the prior bullet, the corrective measures taken immediately following implementation.
- Within 48 hours of observing a failure or marked increase in turbidity associated with dewatering/diversion activity, the project proponent shall provide EPA Region 6 with the photo-documentation and site diagrams described in the preceding two bullets.
- Photo-documentation of post-construction site conditions.
 - The project proponent shall include time-stamped photo-documentation of site conditions (*i.e.*, 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area) within 48 hours of completion.
 - The project proponent shall ensure photographs are taken from the location and direction as indicated in the site diagram as described in the bullet titled “Photo documentation of pre-construction site conditions” above.

Why this condition is necessary: This condition is necessary to ensure that dewatering/diversion equipment failures are appropriately addressed and that corrective measures are implemented. This condition helps protect water quality, and the aquatic ecosystem from suspended particulates/turbidity and other pollutants that can significantly affect aquatic ecosystem diversity, productivity, and stability.

Citations: 40 CFR 230.10(c), (d); 40 CFR 230.21(a); 40 CFR 230.70; 40 CFR 230.72; 40 CFR 230.74

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Should your office have any questions, please feel free to contact Mr. Daniel Landeros our staff at (214) 665-8077 or via email at landeros.Daniel@epa.gov.

Sincerely,

(for) Troy C. Hill, P.E.
Director
Water Division



Pawnee Nation of Oklahoma

Division of Natural Resources and Safety

P.O. Box 470, 301 Agency Road, Pawnee OK 74058 Phone: 918.762.3655
E-mail: dnrs@pawneenation.org

August 15, 2024

Mr. Brett Adams
Regulatory Project Manager
U.S. Army Corp. of Engineers
2488 E. 81st Street
Tulsa, OK 74137-4290

Re: Request for Clean Water Act Section 401 Certification for reauthorization of the "Complete" General Permit-12 (Project No. SWT-2024-00012) in accordance with section 401 of the CWA (Water Quality Certification)

Mr. Adams,

The Pawnee Nation conditionally certifies the proposed General Permit-12 in accordance to Section 401 of the CWA with the following conditions pursuant to Section 401(d) which are necessary to assure compliance with both applicable provisions of the U.S. Clean Water Act and Pawnee Nation Laws and Regulations.

The following conditions apply only to discharges occurring with-in Pawnee Indian Country:

- 1) Copies of the Notice of Intent (NOI) and Notice of Termination (NOT) must be provided to the Pawnee Nation at the same time it is submitted to the Environmental Protection Agency to the following address:
Pawnee Nation Department of Environmental Conservation and Safety
P.O. Box 470
Pawnee, OK 74058
Or email to dnrs@pawneenation.org
- 2) An electronic copy of the Storm Water Management Plan must be submitted to the Pawnee Nation Department of Environmental Conservation and Safety at the same time the NOI is submitted (as required under Part 5.0 of the PGP),
- 3) The Pawnee Nation Department of Environmental Conservation and Safety must be notified at 918.762.3655 immediately upon discovery of any noncompliance with any provision of the permit conditions.

These conditions are authorized under Pawnee Nation Code Title XII (Natural Resource Protection Act), specifically Chapter Four (Water Resource Protection), Chapter Five (Water Quality Standards), and Chapter Nine (Pollution Discharges).

If you have any questions or wish to discuss these conditions or other Section 401 and/or program issues please contact me, Mr. Monty Matlock, Director, Pawnee Nation Division of Natural Resources and Safety at 918.762.3655 and/or email at mmatlock@pawneenation.org.

Cordially,

A handwritten signature in black ink, appearing to read "Monty Matlock", is written over a vertical line.

Monty Matlock, Director, Chief Ranger
Division of Natural Resources and Safety
Pawnee Nation of Oklahoma