



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