



**US Army Corps
of Engineers®**
Tulsa District

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Regulatory Program Emergency Permitting Procedures for Catastrophes and Disasters State of Oklahoma

Purpose: This guidance addresses emergency situations where permits are required from the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Section 10 requires authorization for work or structures in, over, under or affecting the course, location, capacity, or condition of navigable waters of the United States. Section 404 requires authorization for the discharge of dredged or fill material into waters of the United States including adjacent wetlands. This procedure also addresses situations associated with work stoppages associated with alleged violations of Section 404 CWA and/or Section 10 RHA.

Section 10/404 Permitting Situations

1. Normal situations: The proposed action presents no abnormal urgency; the permit applicant proceeds with permit acquisition following standard procedures.
2. Special situations: The permit applicant has a project with urgency or special timing considerations. For these types of situations, an accelerated permitting process may be possible through case-specific justification to the Corps or existing general permits.
3. Emergency situations: These are situations where the time requirements of the normal permit application procedure may present very serious conditions or consequences that could result in the loss of life, the loss of property, and/or a significant economic hardship if steps to remedy the situation are not immediately pursued. This may include emergencies due to a natural disaster (e.g., flood, tornado, earthquake, etc.), a catastrophic (sudden or complete) failure of a facility due to an external or unexpected cause (e.g., a navigation collision or bridge collapse), or a dire national security or national economic crisis. With appropriate justification, emergency authorization procedures can be completed in a matter of days.

The permitting process for emergency situations is addressed in Corps regulations [See 33 CFR 325.2(e)(4)]. The Corps regulations define an “emergency” as “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 regulations reserve the decision authority for approval to proceed under emergency procedures with the Corps Division Engineer. The Tulsa District is part of the Corps Southwestern Division. For emergency situations, the Corps Southwestern Division has special procedures for the district to implement to expedite review of the emergency and grant approval to proceed with the work proposed. The Corps district can also use alternative streamlined permitting procedures, such as general permits and letters of permission, when appropriate, to expedite processing of permit applications for emergencies and urgent situations. The Corps will consider the most expeditious pathway supported by the facts of the matter. The Corps will also consider whether CWA Section 404(f)(1) exemption for maintenance and emergency reconstruction applies to the situation. To ascertain that collateral actions do not exceed the scope of the exemption, proponents are encouraged to coordinate with the Corps to validate the applicability of the exemption. Exemption from Section 404 CWA does not obviate the need for authorization in navigable waters under Section 10 RHA.

Note: For an emergency project that requires Section 408 permission (Section 14 of RHA) for modification or alteration of a Corps Civil Works project, a decision on the emergency authorization cannot be rendered until a Section 408 determination has been completed.

Examples of Emergency Situations

1. Disaster: An action to remediate the consequences of flooding, tornadic storms, and earthquakes is an example of an emergency caused by natural disaster. The Corps Regulatory Office has clarified permitting procedures for dealing with the cleanup and repair caused by these events. Additional information can be found on the following website: <https://www.swt.usace.army.mil/Missions/Regulatory/Flood-Recovery-and-Repair-Activities-in-the-Tulsa/>.
2. Catastrophe: A second example of a potential emergency situation is when actions are necessary to respond to a mechanical failure or human catastrophe which presents dire consequences. Specific examples could include barge collision or allision to vital infrastructure such as bridge or navigational lock gate or approach wall, vessel grounding or breakaway, or a structural failure of bridge or similar over-water or in-water structure.
3. Alleged Violations: A third example of a potential emergency situation would be safety issues associated with work stoppage as a result of an alleged violation of Section 404 CWA and/or Section 10 RHA, including the issuance of a Cease-and-Desist (C&D) order by the Corps. If a C&D is issued on a project already under construction, the stoppage of construction activities for the entire project site (including work in uplands) where the alleged violation occurred could result in a safety situation that would be considered an emergency using the above Corps definition [33 CFR 325.2(e)(4)]. In situations where emergencies occur, where a violation is involved, the Corps may decide it would not be appropriate to stop the unauthorized work. Therefore, in such situations, the Corps at its discretion, would allow work to continue, subject to appropriate limitations and conditions, as prescribed, while the alleged violation is being resolved [See 33 CFR 326.3(c)(4)]. Initial corrective measures to address the safety concerns may also be specified by the Corps [See 33 CFR 326.3(d)(1)]. However, in all cases, it is important for the permittee/applicant to contact the appropriate Corps representative.

The Corps office should be **contacted immediately** when an emergency situation has been identified. Even in an emergency, reasonable efforts will be made by the Corps to receive comments from interested federal, state, and local agencies, and the affected public. Also, a public notice of any special procedures authorized, and the corresponding rationale will be appropriately published by the Corps as soon as practicable. Follow-up coordination may result in additional project-specific requirements to ameliorate the environmental effects of the authorized work.

Emergency Procedures Guidance for Submittals

Permit applicants should follow the steps below to streamline Corps Section 10 RHA and/or Section 404 CWA permit acquisition and expedite responses in emergency situations. An applicant who has designated an agent to communicate and coordinate with the Corps on their behalf must provide written evidence of that designation.

1. Determine if an emergency exists or potentially exists by using Corps definition at 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.”

Note: Projects that take several months to plan and design may not constitute an emergency and may be efficiently reviewed at the Corps district level without invoking emergency procedures.

2. If the situation is an emergency under the Corps definition, contact the Corps:

Primary Contact: Mr. Andrew Commer, Chief, Regulatory Office (918) 669-7400

Alternate Contact: Mr. Michael Ware, Supervisor, Regulatory Office (918) 669-7400

Second Alternate Contact: Emergency Management/Security Office (918) 669-7326

Note: The Corps may determine that emergency work may be quickly permitted by an alternative permitting procedure, (e.g., letter of permission or general permit) that would require minimal additional information or coordination.

3. Follow-up the telephone contact as soon as possible with written documentation (submission accepted via Regulatory Request System (RRS), email, or fax) to document the emergency and provide required information to the Corps. Use of the RRS can expedite initial data entry in the Corps Regulatory database and is strongly encouraged. The following information is the minimum necessary for the Corps to proceed:

- a. Name of responsible party (having legal interest to perform the work) and day-time phone number. Agent representing the applicant must provide written verification of their designation as agent.
- b. Location of work (vicinity map showing location).
- c. Description of work/project including basic dimensions and drawings. The drawings may be approximations and do not have to be to scale or be detailed engineering drawings. Include details of site access and temporary fills to the extent available at the time of submission.
- d. Cause of emergency (describe when (date) and how the emergency occurred).
- e. Urgency of work (describe why the situation is an emergency using Corps definition and potential consequence(s) if emergency permitting procedures are not used).
- f. Measures to be taken to minimize and avoid impacts to waters of the United States and other environs and/or control the footprint of the response action.
- g. Time expected to complete the emergency work including proposed start date.
- h. For any agency coordination completed by the proponent prior to notification of the Corps, provide a summary of each agency's comments on the proposed work.
- i. Statement from applicant acknowledging the following:
 - (1) They will perform all mitigation required by the Corps.
 - (2) The work would be performed in a manner that would avoid and minimize impact to waters of the United States to the maximum extent practicable.
 - (3) Should the permittee discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by the Corps, they must immediately notify the District Engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The District Engineer will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

(4) Description of the potential impacts that may occur to species federally listed as threatened or endangered under the Endangered Species Act, or to designated critical habitat.

(5) The work would be completed in an expeditious manner.

(6) In areas of temporary aquatic resource fill, the impacted area would be restored as near as possible to pre-emergency conditions.

(7) If the work may result into a discharge into waters of the United States, the project proponent will seek water quality certification or a waiver from the appropriate certifying authority.

4. After approved emergency work is complete, the permittee must submit the following information to the Corps:

- a. Description of completed work including any required restoration or mitigation activities,
- b. Delineation of the amount and location of acres of aquatic resources impacted, and
- c. As-built drawings.

Corps Procedures

1. The Corps will fulfill as many standard procedures at 33 CFR 325.2(a) as are reasonable, tailored to the emergency situation.

2. Public notices. For activities requiring standard individual permits, reasonable efforts tailored to the emergency, such as potentially including a 7 to 15-day public notice comment period, will be made by Corps regulatory personnel to explain the rationale for the procedures and to receive comments from interested federal, state, and local agencies, tribes, and the affected and interested public. In situations where an expeditious notice to proceed with the emergency action is warranted, required public notice will be issued following the commencement of work.

3. Water quality certification. Section 401(a) of the CWA and 33 CFR 325.2(b)(1)(ii) precludes the Corps from issuing a permit until Section 401 Water Quality Certification has been obtained or has been waived, or if water quality certification has been denied. This remains true in emergency situations. If the activity requiring DA authorization is not eligible for a general permit where water quality certification has been granted (with or without conditions) or waived for the issuance of that general permit, an individual water quality certification is required to be obtained or waived. A waiver may be deemed to have occurred if the certifying authority has not granted or denied water quality certification prior to the end of the established reasonable period of time for the water quality certification request. For the purpose of emergency permitting, depending on the circumstances of the emergency, the Corps will seek a waiver of certification or an agreement for an abbreviated reasonable period of time of no less than 7 days for 401 Water Quality Certification requests requiring written coverage under a state water quality permit. The reasonable period of time may be greater where the circumstances of the emergency allow more time.

4. Endangered Species Act (ESA) Section 7. The Corps will utilize the existing IPaC Tool (Information for Planning and Consultation) to make effects determinations. The Corps will follow the procedures outlined below for projects that are determined to have adverse effect on listed species or designated critical habitat.

a. If an emergency action may affect a listed species or designated critical habitat, the Corps will coordinate with the USFWS to ascertain measures which will ensure that the emergency action is not likely to result in a take of a species or jeopardize the continued existence of the listed species or destroy or adversely modify critical habitat in the manner provided for in 50 CFR 402.05.

b. Pursuant to 50 CFR 402.05(b), “formal consultation shall be initiated as soon as practicable after the emergency is under control. The federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats.” Although formal consultation occurs after the response to the emergency, procedurally it is treated like any other formal consultation. Information submitted by the Corps will include:

- (1) A description of the emergency energy-related action and why it is needed,
- (2) Justification for the expedited consultation prior to implementation of the action, and
- (3) Impacts of the action on listed species or critical habitat.

c. If after the Corps coordinates with the USFWS to obtain recommendations to minimize the effects of the emergency response action on listed species or their critical habitat, and the Corps determines the emergency response action may affect, but is not likely to adversely affect listed species or their critical habitat, the Section 7 consultation process can be completed if the USFWS issue a written concurrence for the “may affect, not likely to adversely affect” determination. That written concurrence may be dependent on the Corps including measures to minimize effects to listed species and designated critical habitat as permit conditions in the DA authorization.

d. For adverse effects to listed species and designated critical habitat, at the conclusion of consultation the USFWS will provide their opinion on the effects of the emergency action on listed species and critical habitat.

5. National Historic Preservation Act, Section 106. Absent alternative procedures, the Corps will follow 36 CFR 800.12(b)(2), which would require agency notification to the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Office (SHPO), Tribal Historic Preservation Office (THPO), and Tribes with an opportunity to comment within 7 days. The Corps will provide as much information as may be available about the proposed undertaking, its likely effects to historic properties, and any measures proposed to resolve adverse effects in its notification to ACHP. The Corps may allow additional time to comment should the emergency project circumstances allow. The ACHP has extended the applicability of the Section 106 emergency provisions to run for the duration of the Presidential declaration.

Note: 36 CFR 800.12(b)(2) further states the following: “If the agency official determines that circumstances do not permit 7 days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.”

Note: Section 110(f) of the National Historic Preservation Act which addresses National Historic Landmarks would still require agencies to avoid actions that would harm National Historic Landmarks and include the National Park Service in the process.

Note: 33 CFR 325, Appendix C (14) Emergency Procedures: “The procedures for processing permits in emergency situations are described at 33 CFR 325.2(e)(4). In an emergency situation the District Engineer will make reasonable efforts tailored to the emergency to receive comments from the SHPO, the THPOs and the ACHP, when the proposed undertaking can reasonably be expected to affect a potentially eligible or designated historic property and will comply with the provisions of this Appendix to the extent time and the emergency situation allows.”

6. Tribal consultation and the Corps tribal trust responsibilities. Tribal consultation will occur concurrent with the public notice time period, which will be shortened to no less than 7 days. Additional time will be provided to the tribes based on the potential impacts to cultural resources

and the tribes expressed interest in the project where the circumstances of the emergency allow.

7. Section 408 permissions. The Corps Regulatory Office will coordinate with the Tulsa District's 408 coordinator to synchronize the Regulatory reviews. Regulatory Office will encourage divisions that support the technical reviews of 408 requests to prioritize these reviews to minimize any delay.

8. The Corps will evaluate the information provided by the permit applicant and will determine the appropriate pathway to evaluate the proposed action. The Corps will proceed under an alternative accelerated permitting procedure, if appropriate, or an emergency procedure if an alternative procedure does not apply. If an emergency procedure is followed, the permit applicant should proceed only according to Corps direction in providing additional information or taking immediate action, as necessary. Once the Corps receives adequate information, it will develop the final emergency permitting procedure and complete the process. If emergency procedures are warranted by the facts of the matter, the Corps will promptly initiate a formal request to the Corps Southwestern Division Engineer in accordance with procedure. The permit applicant must ensure that the work requiring Corps authorization does not commence until the Corps provides authorization to proceed.

In summary, a permit applicant should immediately contact the Tulsa District Regulatory Office upon identifying a situation which may meet the Corps definition of an emergency when the work either: (1) requires a Section 404 CWA and/or 10 RHA authorization, and a permit has not been obtained or (2) has a Section 404 CWA and/or 10 RHA permit, but the activity is not in compliance with the terms and conditions of that permit.

FOR FURTHER INFORMATION CONTACT:

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Tulsa OK 74137-4290

Telephone: 918-669-7400

Fax: 918-669-4306

Email: CESWT-RO@usace.army.mil

Web: <http://www.swt.usace.army.mil/Missions/Regulatory.aspx>