



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435  
505-342-3284  
FAX 505-344-1514

February 1, 2013

REPLY TO  
ATTENTION OF:

Regulatory Division  
New Mexico/Texas Branch

SUBJECT: Action No. SPA-2013-00033-ABQ, Ft. Worth District, Fort Wingate, Remediation Activities, South Fork Puerco River Tributary, McKinley County, NM

Mr. Steven Smith  
U.S. Army, Corps of Engineers  
Fort Worth District; CESWF-PER-D  
819 Taylor St.  
Fort Worth, TX 76102

Dear Mr. Smith:

The U.S. Army Corps of Engineers (Corps) is in receipt of your preconstruction notification and cover letter from URS Corporation dated January 11, 2013, requesting authorization for your proposed U.S. Army Corps of Engineers, Ft. Worth District, Fort Wingate Depot, HWMU Parcel 3 remediation activities at Fort Wingate, McKinley County, New Mexico. The project is located 35.4352N; -108.6194W, in McKinley County, New Mexico. We have assigned Action No. SPA-2013-00033-ABQ to your file. To avoid delay, please include this number in all future correspondence concerning this project.

We have reviewed this project in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Under Section 404, the Corps regulates the discharge of dredged and fill material into waters of the United States (U.S.), including wetlands. Our responsibility under Section 10 is to regulate any work in, or affecting, navigable waters of the U.S. Based on your description of the proposed work, and other information available to us, we have determined that the proposed project will involve activities subject to Section 404. Therefore, a Department of the Army permit is required.

We have determined that this project is authorized by Nationwide Permit (NWP) 38 for Cleanup of Hazardous and Toxic Wastes. A summary of this permit and the regional conditions for New Mexico are available on our website at [www.spa.usace.army.mil/reg/NWP](http://www.spa.usace.army.mil/reg/NWP). You are

only authorized to conduct the work described in your submittal. To use this permit, you must ensure that the work complies with the terms and conditions listed in the permit and the special condition listed below. The special condition for this permit is:

- The permittee will coordinate the development and implementation of a revegetation plan for the project with the USACE, Albuquerque District, PM-LE. Upon finalization, copies will be sent to the f Albuquerque District, PM-LE and Regulatory Division for our files.

The Corps based this permit decision on a preliminary jurisdictional determination (JD) that there may be waters of the United States on the project site (South Fork Puerco River tributary). Preliminary JDs are advisory in nature and may not be appealed. An approved JD is an official Corps determination that waters of the U.S. and/or navigable waters of the U.S. are either present or absent on a particular site. An approved JD precisely identifies the limits of those waters on the project site determined to be jurisdictional under the CWA or RHA. If you wish, you may request that the USACE reevaluate this case and issue an approved JD. If you request an approved JD, you may not begin work until the approved JD, which may require coordination with the Environmental Protection Agency, is completed. Please contact me if you wish to request an approved JD for this case.

The Corps also based this decision on an approved jurisdictional determination (JD) that there are no waters of the United States on the project site at the potential wetland areas abutting the South Fork Puerco River tributary. The basis for this approved jurisdictional determination (JD) is entirely Uplands. The JD form is available at [http://www.spa.usace.army.mil/reg/Jurisdictional\\_Determinations/jurisdictional\\_determinations.asp](http://www.spa.usace.army.mil/reg/Jurisdictional_Determinations/jurisdictional_determinations.asp). This approved JD is valid for a period of no more than five years from the date of this letter unless new information warrants revision of the delineation before the expiration date.

You may accept or appeal this approved JD or provide new information in accordance with the Notification of Administration Appeal Options and Process and Request For Appeal (NAAOP-RFA). This form is available at [http://www.spa.usace.army.mil/reg/Administrative%20Appeals/appeals\\_process.asp](http://www.spa.usace.army.mil/reg/Administrative%20Appeals/appeals_process.asp). If you elect to appeal this approved JD, you must complete Section II (Request For Appeal or Objections to an Initial Proffered Permit) of the form and return it to the Army Engineer Division, South Pacific, CESPD-PDS-O, Attn: Tom Cavanaugh, Administrative Appeal Review Officer, 1455 Market Street, Room 1760, San Francisco, CA 94103-1399 within 60 days of the date of this notice. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

Under Section 401 of the Clean Water Act, certification of compliance with state or tribal water quality standards by the state water quality agency or tribal water quality certifying authority is required for any discharge of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act. For State Water Quality Certification and a list of tribes with water quality certifying authority and their contact information please visit: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/WaterQualityCertification.aspx>.

In the State of New Mexico, the New Mexico Environment Department (NMED) has issued water quality certification (WQC) for activities that occur in waters of the U.S. Certification is denied in Outstanding National Resource Waters (ONRWs) and for activities authorized under NWP # 16 (Return Water from Upland Disposal Areas). You must comply with all conditions of the attached certification, including notification to NMED five days prior to initiation of construction (WQC Condition 16). To contact NMED, please use the information below:

Mr. Mike Matush  
NMED - Surface Water Quality Bureau  
1190 South St. Francis Drive  
P.O. Box 5469  
Santa Fe, New Mexico 87502  
(505) 827-0505

Our review of this project also addressed its effects on threatened and endangered species and historic properties in accordance with general conditions 18 and 20. Based on the information provided, we have determined that this project will not affect any species listed as threatened or endangered by the U.S. Fish and Wildlife Service within the permit area. We have also determined that this project will not affect historic properties listed, or eligible for listing, in the National Register of Historic Places. However, please note that you are responsible for meeting the requirements of general condition 18 on endangered species and general condition 20 on historic properties.

This verification is valid for the effective period of this nationwide permit, March 18, 2017 (33 CFR 330.6), unless the nationwide permit is modified, suspended, revoked or reissued prior to that date. Continued confirmation that an activity complies with the terms and conditions, and any changes to the nationwide permit, is the responsibility of the permittee.

You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been, accomplished in accordance with the terms and conditions of the nationwide permit.

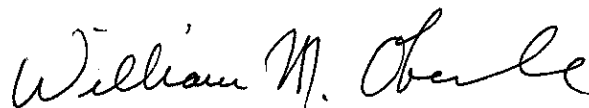
You must sign and submit to us the enclosed certification that the work, including any required mitigation, was completed in compliance with the nationwide permit. You should submit your certification within 30 days of the completion of work.

This permit is not an approval of the project design features, nor does it imply that the construction is adequate for its intended purpose. This permit does not authorize any injury to property or invasion of rights or any infringement of Federal, state or local laws or regulations. You must possess the authority, including property rights, to undertake the proposed work.

To remain valid the project must be in compliance with all conditions of NWP 38, this authorization, regional conditions and the applicable WQC. Non-compliance with any condition could result in the suspension, modification or revocation of this authorization, or initiation of a non-compliance action by the Corps. This NWP authorization does not obviate the need to obtain other approvals required by law.

Copies of this letter have been electronically sent to S. Smith and E. Kirwan (USACE, Ft. Worth), O. Hummel (USACE, Albuquerque), J. Carson (URS) and M. Matush (NMED). If you have any questions concerning our regulatory program, please contact me at 505-342-3284 or by e-mail at [William.M.Oberle@usace.army.mil](mailto:William.M.Oberle@usace.army.mil). At your convenience, please complete a Customer Service Survey on-line available at <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,

  
William M. Oberle  
Project Manager

Enclosure

**Certification of Compliance  
with Department of the Army Nationwide Permit**

Action Number: SPA-2013-00033-ABQ

Name of Permittee: US Army, Corps of Engineers, Fort Worth District, CESWF-PER-D

Nationwide Permit: 38 for Cleanup of Hazardous and Toxic Waste

Project Location: Puerco River South Fork, Fort Wingate, NM, HWMU Parcel 3

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

William Oberle  
Albuquerque District, U.S. Army Corps of Engineers  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435  
505-342-3284  
FAX 505-344-1514

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

Please enclose photographs showing the completed project (if available).

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Date Work Started \_\_\_\_\_

Date Work Completed \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee