



REGION 7

LENEXA, KS 66219

June 20, 2025

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel and Ann McGowan
5305 33rd Avenue
Kearney, Nebraska 68845

RE: Request for Information Pursuant to Section 308 of the Clean Water Act (33 U.S.C § 1318)
Pine Canyon Dam

RESPONSE DUE WITHIN 14 DAYS OF RECEIPT OF THIS REQUEST

Dear Daniel and Ann McGowan:

The U.S. Environmental Protection Agency is issuing this Request for Information to you, pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), because it seeks information related to sluicing of accumulated sediment from the Pine Canyon Reservoir behind the Pine Canyon Dam and compliance with the Section 404 permit (NOW-2011-02835-KEA) issued by the U.S. Army Corps of Engineers.

Section 308(a) of the CWA authorizes the EPA to require the submission of information necessary to carry out the objectives of the CWA, 33 U.S.C. § 1251 et seq., including information to determine whether a person is in compliance with the CWA. Under the authority of Section 308(a) of the CWA, the EPA hereby requires you to provide the information requested in ENCLOSURE A. **Please read the instructions and definitions included in the ENCLOSURE A carefully before preparing your response to this Request for Information.**

We appreciate your cooperation and prompt attention to this matter. If you have any legal questions regarding this information request, please contact Adam Hilbert, the attorney assigned to this matter, at (913) 551-7113, or hilbert.adam@epa.gov.

For technical questions regarding this information request, please contact Dr. Delia Garcia at (913) 551-7262, or garcia.delia@epa.gov.

Sincerely,

DAVID
COZAD

 Digitally signed by DAVID
COZAD
Date: 2025.06.23
10:19:18 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Enclosures

1. Enclosure A – Request for Information and Instructions
2. Enclosure B – Statement of Certification

cc: Jeremy Grauf, COE, Omaha District, Jeremy.Grauf@usace.army.mil
Keith Simmons, COE, Omaha District, Timothy.K.Simmons@usace.army.mil
Brad Pracheil, NDEE, Brad.Pracheil@nebraska.gov
Philip Halsted, NDEE, Phillip.Halsted@nebraska.gov

ENCLOSURE A

REQUEST FOR INFORMATION AND INSTRUCTIONS

RESPONSE DUE WITHIN 14 DAYS OF RECEIPT OF THIS REQUEST

The U.S. Environmental Protection Agency (EPA) requests that you submit the information described below pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318. Responding to this letter with the requested information does not relieve you of any responsibilities under the Clean Water Act, including, but not limited to, seeking, maintaining, or complying with any local, state, or federal permit.

I. Instructions

Contact Information.

1. In each submission required by this Request for Information, identify the person to contact regarding your submission, including title, address and email and/or phone number.
2. Your responses to this Request for Information are to be provided by a qualified professional. For each response required below, provide the name and credentials of the person(s) providing information in response to this Request for Information.

Format of Your Responses.

3. Please provide a separate response to each and every request set forth below. Please label each response in a manner that identifies the number of the question or document request.
4. Except for a cover letter or memorandum and the Statement of Certification, only copies, and not original documents, should be submitted pursuant to this request. Documents and data may be submitted electronically by email or by mail in PDF, Word, Excel or other widely available electronic format. *NOTE: as discussed below, any information claimed as confidential business information (CBI) should be submitted by mail and properly labeled.*

Complete Responses and New or Corrected Information.

5. If any response cannot be provided in full, provide the response to the extent possible along with an explanation of why the response cannot be provided in its entirety and, if applicable, when the remainder of the response will become available and be submitted.
6. If information or documents not known or not available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to the EPA within fourteen (14) calendar days of when the information or documents become known or available. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is inaccurate, false or misrepresents the truth, you must notify the EPA of this fact immediately and provide a corrected response within fourteen (14) calendar days of when you find the information is inaccurate, false or misrepresents the truth.

Accurate and Truthful Information Required.

7. Please be advised that the failure to respond accurately, or the submission of false information, may subject you to administrative, civil, or criminal enforcement that could include penalties, fines, or imprisonment under Section 309 of the CWA, 33 U.S.C. § 1319, and/or 18 U.S.C. § 1001.

Certification.

8. The Statement of Certification found in ENCLOSURE B must be submitted along with your responses every time a submission is made pursuant to this Request for Information. This statement must be made by a person authorized to sign reports pursuant to 40 CFR § 122.22(a) and (b). For your convenience, the text of these provisions is included on ENCLOSURE B.

Confidential Business Information.

9. Information requested by this letter must be submitted to the EPA regardless of a claim of confidentiality. If you believe any of the requested information is confidential, you may assert a confidential business information (CBI) claim under the provisions of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), 18 U.S.C. § 1905, and the regulations at 40 CFR Part 2. Information that you claim as CBI will be held as such pending a determination of applicability by the EPA.
 - a. *Procedures to claim confidential treatment for information requested or demanded by the EPA.*
 - i. You may assert a CBI claim covering part or all of the information requested or demanded by the EPA in the manner described by paragraph (b), below. Information covered by a CBI claim will be disclosed by the EPA only to the extent, and by means of the procedures, allowed by 40 CFR Part 2, Subpart B.
 - ii. If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to the business, pursuant to 40 CFR § 2.203(a).
 - iii. The regulations applicable to a claim of CBI are at 40 CFR Part 2, Subpart B, 41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40000, Sept. 8, 1978; 50 FR 51661, Dec. 18, 1985.
 - b. *Method and time of asserting business confidentiality claim.* Pursuant to 40 CFR § 2.203(b), a business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as *trade secret*, *proprietary*, *confidential business information*, *CBI* or *proprietary business information*. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.
 - c. If you assert a CBI claim on the submitted information and the Agency is determining whether that information is entitled to confidential treatment, you will be given notice to submit comments to support your CBI claim. Information that is publicly available or required to be disclosed to the public by law is not entitled to confidential treatment.
 - d. Please refer to 40 CFR § 2.302, *special rules governing certain information obtained under the Clean Water Act*, regarding limitations on the confidential treatment of effluent data and

standards or limitations.

Submission of Response to Request for Information.

10. It is preferred that your response(s) be scanned and sent electronically to: garcia.delia@epa.gov.

If you are unable to send your response electronically, all responses to this Request for Information must be submitted within the timeframes identified in Section III, below. Each response should be submitted in a manner that allows you to track delivery and be submitted to:

Delia Garcia, Ph.D.
U.S. EPA Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

II. Definitions

All terms used in this Request for Information that are not defined below shall be defined as they are defined at Section 404 of the CWA. Unless otherwise indicated, the following definitions shall apply strictly for the purposes of this Request for Information:

“Record” is defined as any recording of information, including, but is not limited to, in print or electronic form, documents, memoranda, reports, letters, maps, graphs, charts, logbooks, notes, computer print outs and computer data bases.

“Document” is defined as any writings, drawings, graphs, charts, photographs, phone records, electronic mail, facsimile and other data compilations from which information can be obtained, translated if necessary, through detection devices into reasonably usable form. Documents should be produced as they are kept in the usual course of business.

“Permit” is defined as the Section 404 permit (NOW-2011-02835-KEA) issued by the U.S. Army Corps of Engineers on June 21, 2019 including any amendments.

“Sluicing” is defined as the discharge of accumulated sediment from the Pine Canyon Reservoir behind the dam through the opening of one or more gates.

III. Requested Information

Within fourteen (14) days of receipt of this Request for Information, provide the following information:

1. Provide the dates during calendar years 2022-2025 the gates to the dam were opened and closed for purposes of sluicing sediment.
2. Provide an explanation of how and when the required parties were notified of any sluicing events (for calendar years 2022-2025) as required by Special Condition 4 of U.S. Army Corps of Engineers Permit dated June 19, 2019. If any notifications were done in writing, please provide copies of those communications.

3. Provide copies of the staff gauge monitoring logs maintained during sluicing events that took place during calendar years 2022-2025 as required by Special Condition 5.d of the Permit.
4. Was the one -foot deposited sediment threshold ever exceeded at any of the monitored staff gauges during sluicing events that took place in calendar years 2022-2025? If so, were the agencies and landowners listed in Special Condition 5.e of the Permit notified and the sluicing event stopped? If so, provide the dates of exceedances and an explanation of how the parties were notified. If there were any written notifications issued, please provide a copy of those notifications.
5. Did the sluicing events that took place during calendar years 2022-2025 ever lead to exceedance of the bank full discharge limitations at the monitoring staff gauge locations as listed in Special Condition 5.c of the Permit? If so, provide the dates in which that permit threshold was exceeded and the dates in which the sluicing events were stopped.
6. Provide copies of the annual sluicing reports for years 2022-2025 (if completed) required by Special Condition 6 of the Permit.
7. Provide the name(s) and contact information (e.g. mailing address, phone number, email address) of any individuals and/or companies that conducted or assisted with any sluicing activities and any monitoring, reporting, or notification documentation associated with the sluicing activities.
8. Provide copies of all receipts and/or invoices for expenses (sluicing, monitoring, reporting, notifications) associated with sluicing events for years 2020-2025.
9. Provide copies of all dam safety inspection reports and/or letters you have received from the Nebraska Department of Natural Resources for any dam safety inspections that have occurred in the last five years.
10. Provide information on any dam safety repairs you have done or directed to have done on your behalf during the last five years. Provide copies of all invoices, receipts, and/or contracts associated with those repairs.

ENCLOSURE B

STATEMENT OF CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

Signature

Date

Printed Name

Title