



Public Notice

U.S. Army Corps Of Engineers Galveston District	Permit Application No: _____	NWP Reissuance
	Date Issued: _____	Nov 14, 2011
	Comments Due: _____	Nov 30, 2011

SECOND PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

REGIONAL ISSUES CONCERNING THE PROPOSED NWPS, INCLUDING REGIONAL CONDITIONING

On **February 24, 2011**, the U.S. Army Corps of Engineers, **Galveston District**, published a Public Notice of the initial draft of the Texas regional conditions, as they pertain to the proposal to reissue 48 of the U.S. Army Corps of Engineers existing nationwide permits (NWPs) and issue two new NWPs.

This Public Notice is to inform you of the revisions made to the proposed Texas regional conditions. Comments received during the initial Public Notice were reviewed and incorporated into these revised Texas regional conditions.

Nationwide Permits (NWPs) are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the District Engineer before commencing the work to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Enclosure 1 of this public notice lists the proposed revised regional conditions currently under consideration by the South Pacific Division and the Southwestern Division for Texas, including the Albuquerque District, the Tulsa District, the Fort Worth District, and the Galveston District. As the lead district for the Corps Regulatory Program within Texas, the Galveston District is seeking comments on the proposed revised regional conditions or the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Comments on regional issues relating to the proposed NWPs and Texas revised regional conditions are to be sent to:

Galveston District
Regulatory Branch
P.O. Box 1229
Galveston, Texas 77553-1229
Attn: Kristi N. McMillan 409-766-3083

Comments relating to the revised regional conditions are due by **November 30, 2011**.

**NATIONWIDE PERMIT REGIONAL CONDITIONS
FOR THE STATE OF TEXAS**

The following regional conditions apply within the entire State of Texas:

1. Compensatory mitigation is required at a minimum one-for-one ratio for all special aquatic site losses that exceed 1/10 acre and require pre-construction notification, and for all losses to streams that exceed 300 linear feet and require pre-construction notification, unless the appropriate District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement.

2. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, 44, A, and B, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 30 (Pre-Construction Notification). The Corps of Engineers (Corps), except for the Tulsa District, will coordinate with the resource agencies as specified in NWP General Condition 30(d) (Pre-Construction Notification). The habitat types or areas are:
 - a. Wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (Sarracenia sp.), sundews (Drosera sp.), and sphagnum moss (Sphagnum sp.).

 - b. Bald Cypress-Tupelo Swamps: Wetlands comprised predominantly of bald cypress trees (Taxodium distichum), and water tupelo trees (Nyssa aquatica), that are occasionally or regularly flooded by fresh water. Common associates include red maple (Acer rubrum), swamp privet (Forestiera acuminata), green ash (Fraxinus pennsylvanica) and water elm (Planera aquatica). Associated herbaceous species include lizard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis) and smartweed (Polygonum spp.). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Bethesda, Maryland 20814-2198. Library of Congress Catalog Card No. 80-54185)

3. For all activities proposed for authorization under NWP 12 that involve mechanized land clearing in a forested wetland, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 30 (Pre-Construction Notification) prior to commencing the activity.

4. For all activities proposed for authorization under NWP 16, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 30 (Pre-Construction Notification), and work cannot begin under NWP 16 until the applicant has received written approval from the Corps.

The following regional conditions apply only within the Fort Worth District in the State of Texas:

5. For all discharges proposed for authorization under nationwide permits (NWPs) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, and 44, into the area of Caddo Lake within Texas that is designated as a “Wetland of International Importance” under the Ramsar Convention, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 27. The Corps will coordinate with the resource agencies as specified in NWP General Condition 30(d) (Pre-Construction Notification).

6. For all discharges proposed for authorization under NWP 43 that occur in forested wetlands, the applicant shall notify the Fort Worth District Engineer in accordance with the General Condition 30 (Pre-Construction Notification).

7. For all discharges proposed for authorization under any nationwide permit in Dallas, Denton, and Tarrant Counties that are within the study area of the “Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries” (May 1986), the applicant shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website www.swf.usace.army.mil (select “Permits”).

8. Federal Projects. The applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 30 (Pre-Construction Notification) for any regulated activity where the applicant is proposing work that would result in the modification or alteration of any completed Corps of Engineer projects that are either locally or federally maintained and for work that would occur within the conservation pool or flowage easement of any Corps of Engineers Lake project. PCN's cannot be deemed complete until such time as the USACE has made a

determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10, 33 CFR Part 320, Section 320.4.

9. Invasive and Exotic Species. Best management practices are required where practicable to reduce the risk of transferring invasive plant and animal species to or from project sites. Information concerning state specific lists and threats can be found at: <http://www.invasivespeciesinfo.gov/unitedstates/tx.shtml>. Best management practices can be found at: <http://www.invasivespeciesinfo.gov/toolkit/prevention.shtml>. Known zebra mussel waters within can be found at: <http://nas.er.usgs.gov/queries/zmbyst.asp>.

The following regional conditions apply only within the Galveston District in the State of Texas:

10. Nationwide permit (NWP) 12 shall not be used to authorize discharges within 500 feet of vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectfully. Examples include, but not limited to: seagrass beds, oyster reefs, and coral reefs.

11. For all 3-D seismic testing activities proposed for authorization under NWP 6, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 30 (Pre-Construction Notification). The pre-construction notification must state the time period for which the temporary fill is proposed, and must include a restoration plan for the special aquatic sites. 3-D seismic testing will not be authorized under NWP 6 within the Cowardin Marine System, Subtidal Subsystem; as defined by the U.S. Fish and Wildlife, Classification of Wetlands and Deepwater Habitats of the United States, December 1979/Reprinted 1992.

12. All NWPs, except NWP 3, shall not be used to authorize discharges into Mangrove marshes. Mangrove marshes are dominated by mangroves (*Avicennia* sp. and *Rhizophora* sp.). (Preliminary Guide to Wetlands of the Gulf Coastal Plain. 1978. Technical Report - U.S. Army Engineer Waterways Experiment Station: Y-78-5. P.O. Box 631, Vicksburg, Miss. 39180.)

13 All NWPs , except NWP 3, shall not be used to authorize discharges into the following waters of the United States within the coastal zone of Texas: Coastal Dune Swales, “wetlands and other waters of the United States that are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting the tidal waters of the Gulf of Mexico and adjacent to the tidal waters of bays and estuaries. Coastal dune swales are generally comprised either of impermeable muds that act as reservoirs which collect precipitation or of groundwater nourished wetlands in sandy soils. As such, they generally have a high fresh to brackish water table. Vegetation species

characteristically found in coastal dune swales include but are not limited to marshhay cordgrass (Spartina patens), gulfdune paspalum (Paspalum monostachyum), bulrush (Scirpus spp.), seashore paspalum (Paspalum vaginatum), common reed (Phragmites australis), groundsel bush (Baccharis halimifolia), rattlebush (Sesbania drummondii), camphor weed (Pluchea camphorata), smartweed (Polygonum spp.), water hyssop (Bacopa monnieri), cattail (Typha spp.), umbrella sedge (Cyperus spp.), softrush (Juncus spp.), sedge (Carex spp.), beakrush (Rhynchospora spp.), frog-fruit (Phyla spp.), duckweed (Lemna spp.), buttonweed (Diodia virginiana), mist flower (Eupatorium coelestinum), creeping spotflower (Acmella oppositifolia var. repens), pennywort (Hydrocotyle spp.), and bushy bluestem (Andropogon glomeratus).” (U.S. Fish and Wildlife Service, Houston, Texas, and the Texas General Land Office, Austin, Texas).

14. For all discharges and work proposed in tidal waters under NWP 14 and 18 the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 30 (Pre-Construction Notification). The Corps will coordinate with the National Marine Fisheries Service in accordance with NWP General Condition 30(d) (Pre-Construction Notification).

15. For all work in the San Jacinto River Waste Pits (SJWP) Area of Concern (AOC), authorized under a NWP, requires a waiver from the Galveston District Engineer. The applicant shall notify the Galveston District Engineer (DE) in accordance with the NWP General Condition 30 (Pre-Construction Notification (PCN)). This PCN shall be used to review the project to determine if it will result in more than minimal effects to the region, and does not lessen the restriction provided by any General Condition of the NWPs. The applicant must receive written approval, including a waiver from the Galveston DE prior to starting work in jurisdictional areas of waters of the United States.

16. The use of NWP A and B are administratively denied, without prejudice, within the Galveston District boundaries.

The following regional conditions apply only within the Albuquerque District in the State of Texas:

17. Nationwide Permit No. 23 – Approved Categorical Exclusions. Notification to the District Engineer in accordance with General Condition 30 (Pre-Construction Notification) is required for all proposed activities under nationwide permit 23.

18. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under Nationwide Permit 27 that require Pre-Construction Notification, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic

environment must be submitted to the Corps. (See “Guidelines for Nationwide Permit 27 Submittals” at <http://www.spa.usace.army.mil/reg/>).

19. Nationwide Permits No. 29 - Residential Developments, and No. 39 – Commercial and Institutional Developments. These permits do not authorize channelization or relocation of any intermittent or perennial water course regardless of size or rate of flow, except when, as determined by the Albuquerque District, the proposed channelization would impact a previously channelized stream reach, or the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

20. Activities in Special Aquatic Sites, Including Wetlands. Notification to the District Engineer in accordance with General Condition 30 (Pre-Construction Notification) is required for all proposed impacts that exceed 1/10 acre in special aquatic sites, including wetlands.

21. Activities in Intermittent and Perennial Streams. Notification to the District Engineer in accordance with General Condition 30 (Pre-Construction Notification) is required for all proposed activities that involve fills greater than 1/10 acre in perennial or intermittent streams and is not covered by other notification requirements.

22. Springs. All nationwide permits require preconstruction notification pursuant to General Condition 30 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where ground water emanates from a point in the ground and has a defined surface water connection to another water of the United States. For purposes of this regional condition, springs do not include seeps or other discharges which lack a defined surface water connection.

23. Suitable Fill. Use of broken concrete or used tires formed into bales as fill or bank stabilization material requires notification to the District Engineer in accordance with General Condition 30 (Pre-Construction Notification). Applicants must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to environment, cost, existing technology, and logistics), before broken concrete or used tires as bales are allowed as suitable fill.